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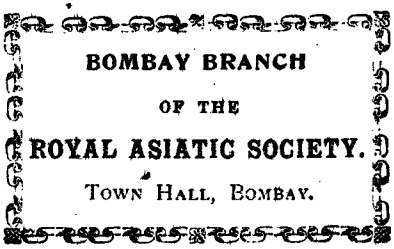

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Round Table Conference

2nd Session

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Proceedings of Federal Structure Committee and Minorities Committee

Vols 1–3.

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Indian Round Table Conference

(SECOND SESSION)

7th September, 1931—1st December, 1931

PROCEEDINGS

OF

FEDERAL STRUCTURE COMMITTEE

AND

MINORITIES COMMITTEE

(Volume I) — III

CALCUTTA: GOVERNMENT OF INDIA
CENTRAL PUBLICATION BRANCH
1932

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INTRODUCTORY NOTE.

Proceedings of the Second Session of the Indian Round Table Conference in Plenary Session will be published separately as a Command Paper, to which this volume is supplementary.

The Introductory Note to the Command Paper explains, briefly, the procedure adopted by the Conference at its Second Session.

NOTE.

The following Heads for discussion were placed before the Committee by the Chairman:—

1. Strength and Composition of the Federal Legislature.
2. Questions connected with the Election of Members of the Federal Legislature.
3. Relations between the two Chambers of the Federal Legislature.
4. Distribution of Financial Resources between the Federation and its Units.
5. The Ministry and its Relations with the Legislature.
6. Distribution of Legislative Powers between the Federal and Provincial Legislatures, and Effect in the States of Legislation relating to Federal Subjects.
7. Administrative Relations between the Federal Government, the States and the Provinces.
8. The Federal Court.

It will be noted that: (*a*) the above Heads were not taken up by the Committee in numerical order; (*b*) Heads 5 and 6 were only partially discussed; (*c*) no discussion on Head 7 has yet taken place.

Detailed points for discussion in connection with each Head were drafted by the Chairman. They are printed in this volume at the commencement of the proceedings under the respective Heads.

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FEDERAL STRUCTURE COMMITTEE.

COMPOSITION:

Lord Sankey (*Chairman*).
*Mr. Wedgwood Benn.
*Major W. E. Elliot.
*Viscount Hailsham.
Sir Samuel Hoare.
Mr. H. B. Lees-Smith.
The Marquess of Lothian.
The Earl Peel.
*Mr. F. W. Pethick-Lawrence.
The Marquess of Reading.
*H.H. The Maharaja Gaekwar of Baroda.
H.H. The Nawab of Bhopal.
H.H. The Maharaja of Bikaner.
*H.H. The Maharaj Rana of Dholpur.
*H.H. The Maharaja of Rewa.
H.H. The Chief Sahib of Sangli.
Sir Akbar Hydari.
Sir Mirza Ismail.
Colonel K. N. Haksar.
*H.H. The Aga Khan (from 16th November, 1931).
*Dr. B. R. Ambedkar.
*Sir Maneckjee B. Dadabhoy.
*Mr. M. K. Gandhi.
*Mr. A. R. Iyengar.
Mr. M. R. Jayakar.
Mr. M. A. Jinnah.
Mr. T. F. Gavin Jones.
*Mr. N. M. Joshi.
*Pandit Madan Mohan Malaviya.
*Sir Provash Chunder Mitter.
Diwan Bahadur Ramaswami Mudaliyar.
Sir Sayed Sultan Ahmed.
Sir Tej Bahadur Sapru.
Mr. Srinivasa Sastri.
*Dr. Shafa'at Ahmad Khan.
Sir Muhammad Shafi.
*Mrs. Subbarayan.
*Sir Purshotamdas Thakurdas.
Sardar Ujjal Singh.
*Mr. Zafrullah Khan.

* Denotes new members.

Sir Manubhai Mehta acted as substitute in the absence of H.H. The Maharaja of Bikaner.

Lord Snell acted as substitute in the absence of Mr. Wedgwood Benn, Mr. Lees-Smith and Mr. Pethick-Lawrence.

Rao Bahadur Krishnama Chari acted as substitute in the absence of H.H. The Maharaja Geakwar of Baroda.

Mr. E. C. Benthall acted as substitute in the absence of Mr. Gavin Jones.

PROCEEDINGS OF THE TWENTIETH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON MONDAY, THE 7TH SEPTEMBER, 1931, AT 3 P.M.

Preliminary.

Chairman: Your Highnesses, Mr. Prime Minister, My Lords, Mrs. Subbarayan and Gentlemen, My first duty, and it is a pleasant one, is to extend to all of you a hearty welcome. Those of us who sat together during the anxious days and weeks at the beginning of this year will especially desire to greet our new colleagues, for we are certain that the happy relations which were established among us on the last occasion will be maintained.

Our task is to continue the work upon which we were engaged when last we met. We are here to offer our experience, to express our opinions, and to pool our ideas, in the hope that by a united effort we may find some solution of the difficult questions which are now causing anxiety to all those who are interested in the future happiness and prosperity of India.

We shall never achieve our ambition unless we understand one another and try to appreciate each other's hopes and fears. The coming weeks will afford an opportunity, both inside and outside these walls, of reaching an understanding. Such an opportunity may never come again in our lifetime; do not let us miss it. Uniformity may not be possible or may not even be desirable, but let us strive for unanimity. I believe that, with patience and goodwill, we can and shall reach a settlement. There is a world opinion with which we shall rightly have to reckon if we fail.

All schools of thought are represented round this table with one exception. That exception will cease to exist this day week when we shall welcome Mahatma Gandhi to this board. He is not they only one who has found it difficult to attend the Federal Structure Committee; but it is idle to put your hand to the plough and then to look back.

Let me express your thoughts and desires, which I too share. To restore peace and happiness to India is worth any personal sacrifice. To see India a nation, realising her age-long dream and taking her proper part in the social and political thought and development of the world, is our great ambition. We at least can begin, even if it is left to others to complete the work.

During the last months India has never been absent from our thoughts for a single day. Both here and with you the situation has been carefully surveyed, the problems set out and alternative modes of dealing with them prepared for your consideration. While we shall be glad to hear the general views of those who are with us for the first time. I am anxious that we should get to grips with the difficulties and come to decisions as soon as possible.

Prime Minister: Lord Sankey, Your Highnesses, Mrs. Subbarayan, and Gentlemen, I am very glad indeed to meet you

again. The sight of this gathering in these rooms, as by magic, switches us back to when we were meeting here last time, and I am very glad personally to renew the friendship made in those days and to meet new friends who have arrived here for the first time. I dare say you have been reading the newspapers, and that you will have seen that changes have taken place since we last met. Be assured, my friends, that whatever changes have taken place, there has been no change in public aims, and I venture to say no change in private friendships. The great discovery, I think, which we made in those previous conference was that until we put ourselves in each other's shoes we could find no key to unlock the very complicated lock of Indian problems; but as soon as you had the imagination to think of yourselves as us, and we had the imagination on the other hand, to think of ourselves as you, we began to find that the key which we put into this intricate lock began to work in a very admirable and successful way. Let us go back to that. Let us begin these deliberations in the same way as we ended the last ones.

Lord Sankey remains the Chairman of this very important Committee. Is not that, of itself, my friends, a guarantee of how the work is to be done? So far as I am concerned, I remain the Chairman of the Round Table Conference; and if, during the next few days, may be for a week or so, I shall be almost absolutely absorbed in other matters, that does not mean that I have ceased to remember the duty I owe to you, or that I am not desparately determined that the same good relations which I was able to establish then shall be continued in the future. That is all I need say at this moment.

Believe me—and I am repeating myself because it is so big in my mind—believe me, the memories that this little gathering recalls, the scenes that it makes alive again, are very pleasant to me, and fill me with the ambition to bring all our work to a successful fruition—successful to you and successful to us.

H.H. The Maharaja of Bikaner: Prime Minister My Lord Chancellor, My Lords, Mrs. Subbarayan and Gentlemen, We meet to-day before the Delegation from the Indian States is completed. In the absence of that veteran Prince, His Highness the Gaekwar of Baroda, and the Chancellor of the Chamber of Princes, His Highness the Nawab of Bhopal, the privilege falls to my lot to thank you, My Lord Chancellor, for the generous words of welcome which have fallen from you, and the Prime Minister for the equally reassuring and kind words with which he has greeted us. We rejoice to know that, notwithstanding the changes which have taken place in the personnel of His Majesty's Government, the Federal Structure Committee will continue to enjoy the wise guidance of you, My Lord Chancellor, and that the Conference as a whole will again meet under the chairmanship of the Prime Minister, Mr. Ramsay MacDonald. Some of those we met last

winter as members of the Government of the day will be in opposition; some of those who were more care-free will be in the trammels of office. We shall miss the official co-operation of our friend Mr. Wedgwood Benn, who, as Secretary of State, gave vivid evidence of his active sympathy. We welcome the still more active association of Sir Samuel Hoare. We in India know no Party in the British political sense; and we are confident—and in thus hoping we are encouraged by the words which fell from you, Mr. Ramsay MacDonald—that our British colleagues, whether in office or in opposition, will continue to be governed by the spirit which governed our earlier discussions—the lasting good of India and the British Commonwealth and of our beloved King-Emperor, whom we are all proud to serve.

There are matters of procedure which we may have to raise later. But I would ask you to believe, My Lord Chancellor, that we are grateful for the kind welcome which you have accorded to us; and I would also express our confidence in you and in the Prime Minister and in our colleagues, and my unflinching belief that, under your guidance, and with the constant inspiration of His Majesty the King-Emperor, we shall pursue this great task to a successful issue—differing perhaps on a few details, but united in the spirit of service to India, the Empire and the Crown.

Sir Samuel Hoare: Your Highnesses, My Lord Chancellor, Prime Minister, Mrs. Subbarayan and Gentlemen, When we adjourned last autumn, who would have thought of the changes that have taken place in this short space of time? Who would have imagined that I should be standing here with the Prime Minister and the Lord Chancellor as my colleagues in the Government on the one hand, and Lord Reading as one of my other colleagues on the other hand? Truly, the ways of Providence are inscrutable! Truly, the changes and chances of the world are beyond our calculation!

Mrs. Subbarayan and Gentlemen, the Prime Minister has already stated quite clearly and definitely that, in spite of all these apparent changes in the status of the personnel of the British Delegations, there is no change in the attitude with which we, the members of the Conservative Delegation—and here I am speaking in my double capacity, both as a member of the Government and as a member of the Conservative Delegation—approach the problems that we are going to discuss. Our position and our attitude are identically the same as our position and our attitude were in the discussion of last autumn; and do not think that, because our status has changed, therefore our opinions have altered. I am as anxious—and so are my Conservative colleagues—as any in this room to see a settlement of our many problems that will ensure both sound government and good will between India and England; and it will be my endeavour, just as it was my endeavour last autumn, to try to carry that into effect.

There is only one other observation that I should like to make. Lord Peel is to-day taking the Oath of Office at Balmoral; otherwise he would have been present to say a word in support of my words as a member of the Conservative Delegation. Lord Hailsham, who has, as you know, been added to the Conference and to this Committee, has, unfortunately for us, been compelled to take a short holiday. None the less, he will follow our proceedings closely and carefully, and I hope that, when his holiday is finished, we shall have the benefit of his very valuable advice.

Having made these few observations of welcome, let me end by responding to the kind words just uttered by His Highness of Bikaner. I am grateful to him for the word of welcome that he has addressed to me, and I can assure him that we shall approach these questions with a desire to find a solution, with an anxiety for settlement, with a firm intent to increase the good will between India and Great Britain; and that these political changes that have taken place in the last few days and in the last few weeks will in no way alter the sincerity and the energy with which we shall approach that task.

Sir Muhammad Shafi: Lord Chancellor, On behalf of my colleagues, as well as from myself, I desire to express our grateful appreciation of the cordial welcome which you have been pleased to extend to us on our resumption of the great task undertaken by this Committee this afternoon. Coming, as this message of welcome does, from one who, if I may venture to say so, has, by his great ability, consummate tact and unrivalled courtesy, already won a high place in our esteem and affections, it would have been welcome in any case; but, coupled with the very kindly and gracious sentiments and the welcome pronouncements made by the Prime Minister and the Secretary of State this afternoon, that message is doubly welcome.

We have travelled across the seas to resume a task the completion of which, if made to the satisfaction of all the interests, British as well as Indian, which find so important a place in India, will be a land-mark in British-Indian history and will conduce not only to the happiness and contentment of the vast population of that sub-Continent, but will, we hope and trust, strengthen the connection which binds India and England together. My Lord Chancellor, God grant that we may succeed in framing for India a constitution in which all sections of its peoples, irrespective of colour, caste and creed, will find their legitimate place! Should that consummation be reached, not only will the happiness and contentment of 350,000,000 of His Majesty's Indian subjects be thereby secured, but India will be a source of strength to that great Commonwealth of which she aspires to be an equal partner.

Mr. Wedgwood Benn: Lord Chancellor, My first duty is to express on behalf of Mr. Henderson, the Leader of the Parliamentary Opposition, his regret that circumstances have prevented him

from being present this afternoon. So far as the Parliamentary Opposition is concerned, there is really no change in the situation from the Indian standpoint. Just as the Prime Minister truly said, our personal relations of affection and respect remain absolutely unaffected by the political whirligig of the last few weeks, so the feelings that we all entertain towards the Indian problem remain exactly as they were. Speaking for my friends—those for whom now I speak as their representative—I can say that I hope, in the capacity of an unofficial member of this Delegation, to have another opportunity of serving India in the way that I strove to serve her at our last meeting.

Sir Manekjee Dadabhoy: Your Highnesses, Lord Chancellor, Prime Minister, Mrs. Subbarayan and Gentlemen, As a new recruit to this Conference I may be permitted to associate myself with the sentiments which have been given expression by His Highness the Maharaja of Bikaner and my friend Sir Muhammad Shafi. We all realise that we meet now under very difficult circumstances; we are all aware of the great clouds which are now hanging over England; we all deeply sympathise with you in the unfortunate situation in which England has been placed. On behalf of my colleagues and myself I beg to express the hope that these clouds may soon disappear, that England may stand forth again in all its glory as one of the greatest financial countries, that she may settle her troubles before long, and that she may help India in settling her position and status. We are all very grateful to you, Lord Chancellor and Prime Minister, for the kind assurances which you have given us this afternoon. We are grateful to you for those assurances; we believe fully in the sincerity of purpose and the aim of the British Government to help India in her present critical condition and to discover the way to help her in the formation of a new constitution. In this work and in our deliberations you shall have the unstinted support of the new recruits who have joined this Conference. We shall help you in your deliberations and will endeavour to come to some decision which will meet with general acceptance. But one thing is certain: no settlement can be arrived at unless mutual sacrifices and mutual compromises are made. It is only by means of compromise that the future of India can be settled. I do appeal to everyone here to approach the deliberations which will take place in this Conference in a spirit of sympathy and compromise.

Lord Reading: Your Highnesses, My Lord Sankey, Prime Minister, Mrs. Subbarayan and Gentlemen, I am glad indeed that, in the change of position, I am still able to give my services, so far as I can, to this Conference and to assist in arriving at conclusions which will be helpful to India and to the Empire. My impression at the moment is that, in truth, amongst us who were members of this Conference when we separated in January, there will be no change in the atmsophere which fortunately prevailed then.

I think our desire must be to recapture and maintain that atmosphere of friendliness, of candour, of recognition of each other's point of view, and of desire to adjust as far as possible our own points of view, always having regard to the interests of the Empire and of India.

We have one other goal which I think we must strive to reach. I think those of you who were present during the last Conference will agree that we benefited very greatly by the contacts which we were able to make and by the discussions that we had together, sometimes in this Palace and sometimes outside. These were of very great use; and we should strive, not only to maintain that atmosphere, but to communicate it to those who have not yet taken part and who, perhaps, have not realised the value and advantage of the conferences that we had together.

Without seeking to detain you further, may I endorse all that has fallen so well from those who have already spoken; and may I say, on behalf of the Delegation which I represent at this moment, that we shall continue in the same spirit as before. We shall strive all we can to assist India and to bring contentment and peace and, we hope, greater happiness to India and consequently to the Empire.

Mr. Sastri: Lord Chancellor, On this side Sir Muhammad Shafi and Sir Manekjee Dadabhoy have with eloquence spoken for everybody. Nothing more needs to be said. We have no need to give assurances to those who sit on the other side of the Lord Chancellor that the old state of things obtains among us. There have been no revolutionary changes of Government or Opposition among us.

I am more than pleased to hear from Sir Samuel Hoare and from others that the startling changes which England has seen will not make any changes at all so far as India is concerned. That is a word of comfort which my countrymen will welcome; and if, as Lord Reading said, we are able, God willing, to recapture the spirit which animated the Conference when it sat last time, there need be no misgiving in any quarter as to the great results both for India and for the Empire which will follow.

Sir Tej Bahadur Sapru: I would respectfully reciprocate the sentiments to which expression has been given this afternoon by the Prime Minister, by Lord Sankey, and by other members of the British Delegations. Last year, in my opening speech, I ventured to express the hope that before the Conference concluded we would be able to arrive at some satisfactory conclusions. It was open to the critics of the Conference last year to say that the Conference was not representative of the entire country. It is a tribute to the spirit which was displayed last year at the Conference that an important party, which was withholding itself from the Conference, is now going to be represented here. Those who doubted the value and the utility of the last Conference will have to think

twice before they will be able to challenge the representative character of the people who have now assembled from my country.

Mr. Sastri has referred to the revolutionary changes in the position of the Government here. Personally, I feel that, while last year we had to deal with three parties among British politicians, we have now to deal practically only with two—the Opposition, who were the Government last year, and the Liberals and Conservatives and some members of the Labour Party, who have now combined themselves into one Government. Therefore, just as the Indian section of the Conference will be thoroughly representative, so it can be said that the British Delegations are thoroughly representative, and the task of settlement should therefore be all the more easy.

It is in that spirit that I approach the whole task before us. I am fully aware of the difficulties that lie ahead, but difficulties have to be faced and must be conquered. We cannot afford to let this Conference fail; it would be disastrous to India and it would be disastrous to the reputation of England. I think it is the business and the duty of every one of us, British or Indian, Hindu or Muhammadan, Parsee or Christian, to see that this Conference succeeds, so that the great problem of India may be solved to the satisfaction and contentment of India and to the credit and glory of England.

Sir Akbar Hydari: Mr. Prime Minister, Lord Sankey, Your Highnesses, Mrs. Subbarayan and Gentlemen, I had not intended to speak this afternoon but I cannot resist the call that has been made on me by Lord Sankey; and I wish to associate myself with the general expression of goodwill and satisfaction at our re-assembling here so early, notwithstanding the preoccupations which His Majesty's Government must have, to try to find a solution for the great problem which at present confronts the Empire with regard to India. We are all very grateful to the members of the British Delegations for their assurance that the same spirit and the same attitude towards a sympathetic consideration of the Indian problem exists now as it did before. Of this we were assured also when we learned that the constitution of those Delegations remains practically the same, although perhaps some places have been changed in a physical sense.

So far as we on this side are concerned, speaking on behalf of Hyderabad, I should like to assure you that our attitude remains exactly the same as before, and that the structure which you commenced to build on the last occasion still remains the one the construction of which we hope to continue. We think that the Federal idea is the only idea that will really meet the needs of India's case, and we hope that in every possible way we may be able to assist in helping you towards the completion of that structure.

(The Committee adjourned at 3-45 p.m.)

PROCEEDINGS OF THE TWENTY-FIRST MEETING OF THE FEDERAL STRUCTURE COMMITTEE, HELD ON MONDAY, THE 14TH SEPTEMBER, 1931, AT 11 A.M.

Preliminary—contd.

Chairman: Your Highnesses, My Lords and Gentlemen, I should like very much to welcome the three new Delegates to our Federal Structure Committee, His Highness the Gaekwar of Baroda, Mr. Gandhi, and the Pandit Malaviya. We are very glad indeed to have them. I think without them our gathering would not have been representative; and now we have all shades of thought and opinion, and I feel quite sure that with patience and goodwill we shall get to some settlement.

This is an opportunity for any new members who desire to address the Federal Structure Committee to say anything that they wish to say, but I am sure you will forgive me for saying that this is not the moment to express final opinions; all we have to do at present is to make suggestions and to see how far those suggestions are acceptable. I do not for a moment suppose there will be anything at all in the nature of what is called an ultimatum, but I would remind you that an ultimatum comes, if at all, at the end and not at the beginning of the negotiations.

H.H. The Maharaja Gaekwar of Baroda: My Lord Chancellor, I should like to thank you for your kindly words of welcome. We are about to take up the threads where they were, for a time, dropped last year. We are to attempt, if I may change the metaphor; to build a superstructure on the foundations which were then laid. Let me assure you, My Lord, that we are all—for I feel sure that I can speak with equal confidence for my brother Delegates as for myself—ready to do our best to find a solution of the difficult problems which confront us, and to reach the goal which we all desire. It may not be easy; but with good will and with determination we shall surmount the obstacles, however formidable they may be, and I trust that when the time comes again for parting we shall see more clearly the vision which I have long cherished and which has been the dearest dream of my life—the vision of a united and self-governing India working together for the good and for the progress of the Indian people.

Dr. Shafa'at Ahmad Khan: My Lord, I thank you for the opportunity you have given to new members for the expression of their views on some of the points of the Federal Structure sub-Committee's Report, Sir, I have heard from a safe distance of the work you have done and of the great and unexampled courtesy, tact and resource which you have shown in the management of this Committee. My experience of the Committee is very limited; but from what I have gathered during the last week I can say that, if we carry on the work in the spirit in which it was carried on last year, I am perfectly certain that we shall be able to achieve lasting foundations for the welfare, security and safety of India.

My Lord, this is a Committee not dealing with low or sordid details, but it is a Committee which is preparing a constitution for millions, may be for generations. It reminds me of the old Roman Senate—not a Committee of ordinary individuals but a Committee of statesmen. I am not presumptuous enough to think that whatever I may say will be of any substantial help to the members of this Committee. My only qualification for the task is that I have had practical experience of the Provincial Legislature for seven years; I have been Chairman of local bodies and Chairman of the Muslim members of the Legislative Council in my own Province for a short period. This is a very limited experience, but I claim that in dealing with matters of this kind it is practical experience that counts. Although I have had only a limited practical experience I will try to embody that experience in the remarks which I am going to make.

I am speaking not only in my personal capacity, but I am speaking on behalf of the section which I have the honour to represent in this body. Lord Chancellor, my task has been facilitated by the fact that the sub-Committee itself made it perfectly clear that the Report was provisional and, in a way, incomplete. I think, Sir, you very wisely left a number of details to be settled by negotiation or discussion in future. Again, when the scheme of federation was broached in this Committee, very few people in India knew or understood its significance at the time it was discussed here. Within the last six months, since our return to India, every section and every interest knows the implications of the proposals of the sub-Committee, and public opinion has been mobilised on some of the most important recommendations in the Report of this sub-Committee. We are, therefore, in a position to express clear, definite, unambiguous and certain views on some of the points to which I should like to draw attention.

Then there is another factor, Sir, to which I should like to refer, and that is the presence of Mahatma Gandhi. Whatever view I may take, or whatever view other people may take, as regards certain problems with which we may be faced later, it cannot be denied that Mahatma Gandhi's personality is a unique contribution to the solution of Indian problems. He has played a great part in the past and I hope he is going to play it in future. That is a factor of tremendous importance so far as this Committee is concerned, and it removes one objection which has frequently been urged against this Conference—the objection that very strong, influential, representative bodies, wielding really great influence in India, have not been represented at the Conference. That objection is removed, and I can say now that this Committee, with Mahatma Gandhi's presence, can deliver the goods; and if anything is approved by all the interests and all the communities represented here it will have the sanction of England, of India, and of the World behind it.

Sir, I would like to make a few remarks which, I hope, will be noted; and if opportunity is provided for further discussion I

shall be quite willing to adduce arguments in support of these remarks. I believe that this is not the occasion and not the time for arguments on any points that I may bring forward. The time for argument may arise, and I hope will arise, when we deal with specific issues. Again, Sir, I am not here, and nobody is here, to start debating points with one another. We are not really in a house of legislature. We are here to construct. We are not here to start carping criticism on any point that may be brought forward for discussion.

Having made these remarks, Sir, I will now go ahead with the task and I will offer just a few suggestions for the consideration of this Committee.

I come, Sir, to the basic principle of federation. So far as the principle of federation is concerned I am in complete agreement with the idea. There is not a single Indian, to whatever party he may belong, whatever interest he may represent, who is not whole-heartedly in favour of the principle outlined with such great zeal, intellect and ability by my friend Sir Tej Bahadur Sapru. But, so far as details are concerned, I am afraid at this stage I cannot commit myself. I believe, Sir, that, to use a hackneyed expression, until the picture is complete it will be quite impossible for me to say whether federation really is practicable, and what is useful both for India and for the Indian States. I will give only one example to illustrate the difficulty which I and some of my way of thinking feel on this point. Take the question of the quantum of representation in the two Houses of the States. Until I know what it is going to be I really cannot say whether the price we are going to pay for federation will be suitable.

Then, Sir, my second point is that in a proper and genuine federation there must be complete autonomy of the constituent units. If we are going to have a federation of the type which some of us contemplate, I say it is absolutely essential that it should be a genuine and a true federation. Unless it is so, there will be paralysis at the Centre and anæmia at the circumference. We therefore require true and real sovereign states of British India. We do not require a unitary government with territorial decentralisation. In order, therefore, that the idea may be carried out logically, authoritatively and consistently, in my humble opinion, it is necessary that the list of subjects appended at the end of the Report of the Federal Structure sub-Committee should be revised I believe that certain of the subjects called " Central " subjects could easily be handed over to the Provinces.

In the third place, Sir, I believe that it is absolutely essential for the success of the Federation which we are going to introduce that Law and Order in all Provinces should be the exclusive charge of the persons at the helm of those Provinces. The Federal Legislature or the Federal Cabinet should have absolutely no power over the department dealing with that supreme question of Law

and Order. I can quite imagine, Sir, that cases may arise in which more than one Province may be concerned; emergencies may arise. I claim that in those cases the Governor General, and the Governor General alone, should have the power; that neither the Federal Cabinet nor the Federal Legislature should be competent to interfere in the details of administration of any Province. I believe, Sir, that the Report does contain a provision wherein it is stated that the Governor General shall be empowered to adopt measures for the safety and tranquillity of British India. I believe the object could be attained by empowering the Governor General to take measures if and when such cases arise. I do hope that the cases will be rare, and I am certain that the Governor General himself would not like to interfere or to do anything which is likely to affect the autonomy of any Province. But, if he does, and if he is justified in doing it, then I am sure that his conduct will be approved, provided he keeps within the limits assigned to him in the Constitution.

Then, Sir, there is another point which is a corollary to this. The Home Member and the Government of India at the present time have enormous powers, tremendous powers. When Law and Order is transferred to the Provinces those powers will have to be strictly circumscribed and limited, and the Home Member in India of the future will be practically in the same position as the Secretary of the Interior in the United States of America. He will have nothing to do with Law and Order, but will occupy the position in India which is now occupied in America by the Secretary of the Interior of the United States of America.

Then, Sir, I come to a somewhat ticklish question; but I think it is absolutely necessary for people who think as I do to be absolutely frank. I want to lay all my cards on the table. So far as the States are concerned I think their representation in both Houses should be according to population.

Then there is another provision which I think will have to be kept prominently in view. When the constitution confers autonomy on the Provinces it must be made perfectly clear that it also involves complete financial autonomy. It is not sufficient to have mere political autonomy; it is essential that each Province should have complete power over the purse. The necessity for this will be apparent from the fact that a recent Report on the working of the Federal Constitution in Australia has shown that it is the power of the purse in the Central Government which has very seriously limited the work and the functions of the various States of the Federation.

The next point connected with this is the question of the participation of the Indian States in the Federation. I am, and have been, of the view that British Indians should not interfere in the affairs of the Indian States. I respect the autonomy of the Indian States; I regard the Treaties made with them by the East India Company and by the Crown as sacred. and I would most certainly

oppose any attempt on the part of anybody to dictate to the Indian States as regards their internal affairs or domestic policy. But, while I do so, I also expect in return that the doctrine of neutrality will be observed by the States in regard to the affairs of British India, and I am very glad indeed that the Chancellor of the Chamber of Princes and His Highness the Maharaja of Bikaner made this point perfectly clear in their speeches at the meetings of the sub-Committee.

My difficulty is that, if representatives of some of the Indian States are included in the Cabinet, it will be quite impossible for them to keep completely aloof from the current of British Indian politics, and British Indian politics are bound to have repercussions on the domestic policy of the Indian States.

I am only pointing out the consequences. I do not like them myself, but I am simply trying to show what will ultimately happen. I believe that, in order to avoid this, appropriate machinery should be devised. I do not know if it is possible; I have not been able to conceive any method which will lead to the erection of a " Chinese Wall " round the States. It is quite impossible for me to conceive it; but if it is possible to do so I would most certainly welcome it. My difficulty is that, if representatives of the Indian States are included in the Cabinet, they are bound to be involved in the politics of British India, and it is quite impossible, therefore, for the Indian States to keep absolutely aloof from the current of national politics.

Then, Sir, there is another point to which I should like to draw the attention of this Committee. In one of the sections of the Report of the sub-Committee, it is pointed out that the Governor General will, of course, appoint a person who will be the Prime Minister, and the Prime Minister will choose his colleagues to form the Cabinet. Let me say at once that I entirely agree with the principle enunciated there. I believe that, in the Dominions, this is and has been the practice for a number of years. I feel, however, that in the present circumstances of India occasions may arise when it will be quite impossible for the Governor General to select one man who has the confidence of the majority of the Legislature. If and when such occasions arise, then the Governor General should have the power to appoint members of the Cabinet direct. I hope that such cases will be few and far between, but a constitution is not made merely for normal occurrences —it must provide also for emergencies; and I claim that, if this principle is mechanically or automatically followed in some cases, it may bring about a deadlock and the constitution may not really be workable. I therefore propose that a provision should be made in the Constitution whereby the Governor General should, in exceptional circumstances, be allowed to appoint persons direct as members of the Cabinet—the leaders of the various groups, and so on. There may be occasions when a person has a party of, say, a hundred numbers, while someone else may have another party

of about the same size, and perhaps there will be a third party of approximatey the same size. These parties may in some cases be of equal strength, and in those cases the Governor General should not be debarred from appointing the persons who, he thinks, will, if combined, be able to command the confidence of the Legislature.

My next point refers to commercial safeguards for the Europeans. I am, Sir, and have been, a whole-hearted supporter of safeguards for my community; and if I believe in the principle of safeguards for minorities, I equally strongly believe in the principle of safeguards for Europeans in India. I have had opportunities of appreciating the work which the European community has done in India. In my own Province, Cawnpore is the nerve-centre of the industries of the north of India, and I know that the whole of that city was built up by the enterprise and the energy of the Europeans. I therefore support whole-heartedly the compromise arrived at in the Report of the Minorities sub-Committee of the Round Table Conference.

Next, Sir, in the Reports of the Franchise sub-Committee, of the Services sub-Committee and of the Minorities sub-Committee, there are certain portions dealing with fundamental safeguards, safeguards which guarantee to minorities and different interests protection. I suggest that rules should be framed by appropriate authority for the enforcement of those safeguards. I am not going to suggest here how those rules should be framed; my point is that those safeguards should not remain mere vague and ethereal generalisations. They are there to be worked and should be enforced.

Lastly, I have studiously avoided any reference to the question of the minorities, and I am not going to refer to it. Since our return to India, however, the opinion of my community has become clearer than it was when we were here last. It has crystallised. My community holds certain opinions, and it has expressed those opinions with no uncertain voice. A number of meetings and conferences have been held and a programme formulated which leaves no room for ambiguity or uncertainty. The position is that, so far as Muhammadans are concerned, they would certainly prefer questions directly concerning responsibility in the Centre to be discussed last, because they feel that it would be difficult—I do not say impossible, but that it would be difficult, if not impossible—to discuss these questions at this stage; and I am grateful to you, Sir, therefore, for arranging the Agenda in a way which will meet our wishes, because we feel that until we know what our position is going to be it would be difficult for us to commit ourselves to any scheme. I know it may be said by some that this is the central problem before the Committee. Logically that is correct, but I submit that sometimes logic and politics are belligerent bedfellows, and one has in some cases to pay regard to expediency. I therefore trust, Sir, that we shall not arrive at that crucial point until after the Minorities Committee has met; and

I am very glad indeed that the presence of Mahatma Gandhi will, as it is bound to do, facilitate our task. There is no reason why the Minorities Committee should take a very long time. There are only a few points—though, of course, points of supreme importance—left; and I am perfectly certain that, with the help and co-operation and real, genuine sympathy of Mahatma Gandhi, Pandit M. M. Malaviya and other gentlemen represented here, we shall be able to achieve a lasting and a true and a genuine settlement of a problem which has baffled a number of persons for at least ten years.

Mr. Sastri: May I enquire whether Dr. Shafa'at Ahmad Khan spoke for the whole of his community in the observations with which he concluded? I thought he began by making such a claim.

Chairman: I do not know about that. I think that is a question which perhaps you might ask him a little later.

Mr. Iyengar: I am grateful to you, My Lord Chancellor, for giving me the opportunity to say a few words at the outset of the resumption of the work of this Committee. I am here as a *novus homo*, and therefore have not had the advantage of being in full possession of all that I should know as to the stage at which, and the methods by which, we should proceed to complete the task assigned to this Committee. You will permit me to explain, My Lord, that the honour and privilege of participating in this work here were extended to me by the Premier; and I am glad to be able to accept the same, in pursuance of the Declaration he made when the Conference last adjourned on behalf of His Majesty's Government, and of the policy that resulted at the conclusion of the Gandhi-Irwin Agreement. In the course of that Declaration it was stated that:—

> "His Majesty's Government will consider, without delay, a plan by which our co-operation may be continued so that the results of our completed work may be seen in a new Indian Constitution. If, in the meantime, there is a response to the Viceroy's appeal to those engaged at present in civil disobedience, and others wish to co-operate on the general lines of this declaration, steps will be taken to enlist their services."

Later on it says that:—

> "His Majesty's Government will strive to secure such an amount of agreement as will enable the new Constitution to be passed through the British Parliament and to be put into operation with the active good will of the people of both countries."

We are therefore here, My Lord, to help to see that the present British Parliament is able to put through that legislation for the establishment of the new Indian Constitution. The participation

of Mahatma Gandhi as the sole accredited representative of the Congress in this Conference for the above purpose has been made possible by the successful issue of the negotiation which Lord Irwin had with Mahatma Gandhi; and I assume, therefore, My Lord, that all of us who are here to-day will resume our deliberations on the basis of the policy that was formally recorded in that document of State. It states as follows:—

> "As regards constitutional questions, the scope of future discussions is stated, with the assent of His Majesty's Government, to be with the object of considering further the scheme for constitutional government of India discussed at the Round Table Conference. Of the scheme there outlined, federation is an essential part; so also"—(and I would stress it with reference to what my friend Dr. Shafa'at Ahmad Khan said)—"are Indian responsibility and reservations or safeguards in the interests of India for such matters as, for instance, defence, external affairs, the position of minorities, the financial credit of India and discharge of obligations."

It seems to me, therefore, My Lord, that there could hardly be any dispute among any of us here on the fundamental propositions thus set forth; and our task must be to see, as the Prime Minister said at the time, that no delay takes place in putting the new constitution into operation, and that it starts with the goodwill and confidence of all the communities concerned. I am hopeful, My Lord, now that the plan of federation has obtained acceptance, that its general principles will be clearly recognised and fearlessly applied in discussing the schemes which we should establish and develop. Similarly, once the principles and the views declared by the Government are accepted—namely, that responsibility for the Federal Government of India should in future rest upon Indians themselves, and that the proper method of giving effect to this principle is to follow what has been adopted in all Dominion constitutions—questions connected with transitional reservations and safeguards are bound to be solved satisfactorily to everybody concerned, provided the principle is honestly accepted and carried out without mental or other reservations. It was from this standpoint that, I believe, the Gandhi-Irwin pact—which was concluded after full discussion and with the full assent of His Majesty's Government—declared that the safeguards to be discussed in this and other Committees should be in the interests of India, certain misapprehensions about which were definitely removed by Lord Irwin within a few weeks after that agreement.

I do not propose to-day, My Lord, to elaborate my ideas on the details of the plan which it will be our duty to devise; but I hope, as the discussion developes, to offer them to the Committee for what they are worth in the order which you, My Lord, have laid down, as to the detailed points on which we should find agreed solutions.

There are only two or three observations which I may, perhaps, make at this stage on the position in regard to the three essential bases on which we resume our conversations: namely, federation, responsibility and safeguards. As the Federal Structure sub-Committee's Interim Report points out, the process of federation will involve the creation of a new State. I think it is necessary for us to clearly realise that what the new constitution will bring into existence is a new State. If I may borrow, perhaps, antiquated German phraseology, what we will want will be a Bundestrat and not a Stattenbund; and from that point of view, if we approach the problem of how to devise this Federation with due regard, I quite concede, to the rights of Indian States and to the rights of provincial autonomy which Indian Provinces possess, I do not think it will be difficult for us to devise a plan by which we can definitely separate the functions of the Federal authority and of the State authorities. Nor do I think the fact that we have got to scrupulously observe the Treaties, which the British Government has made with the Indian States, necessarily militates against the proposition that we, as we are, should conceive ourselves as a big State. As His Highness the Maharaja Gaekwar of Baroda stated at the very outset, what we all aspire to, we of the Indian States and we of the British Provinces, is a united and self-governing India. When that position is conceded, it seems to me, Sir, that the question as to how we shall provide for the protection of Treaty rights and for the protection of internal autonomy could be easily devised by those whose legal knowledge and authority we shall have at our disposal in the course of our deliberations in this Committee.

On this matter, further, I desire to point out that this idea of what the Maharaja called a united and self-governing India is an idea which, from the point of view, if I may say so, of the external personality of this country, has been accepted in all our international transactions. We British Indians and Indian States, to all intents and purposes, present the appearance of a united and self-governing India to the outer world in regard to transactions connected, for instance, with the League of Nations, with the Imperial Conference, and various other institutions in which, so far as the theory of representation is concerned, India is treated as a member of the British Commonwealth to which we all belong. Whether we shall become free and equal partners in the Commonwealth is the problem which we are going to solve at the sittings of this Committee.

Then, Sir, the only other point on which I think that this question of the relations of Indian States and the Federation will arise is in regard to the basis on which we are here to conduct our future proceedings, namely, with regard to responsibility. As the Federal Structure sub-Committee's recommendation on this matter recognised, this responsibility is to be established in the same manner in which other members of the British Commonwealth as well as the British Constitution have established it, namely, that of

Parliamentary responsibility. Now, if we accept the principle of Parliamentary responsibility as you have very properly put it in the Report:

> "In the opinion of the sub-Committee the proper method of giving effect to this principle is, following the precedent of all the Dominion constitutions, to provide that executive power and authority shall vest in the Crown, or in the Governor-General as representing the Crown, and that there shall be a Council of Ministers appointed by the Governor-General and holding office at his pleasure to aid and advise him."

—(that is the technical form in which ministerial responsibility, as we understand it, under the parliamentary constitutions, has been provided for in all Dominion constitutions)—on that footing, Sir, I am perfectly confident that the Indian States will be as anxious to come in and take their proper position in regard to the discharge of responsibility in the Federal Legislature, in the same manner in which that responsibility is borne in other parliamentary constitutions. Therefore, in discussing the question as to how this responsibility should be enforced under the constitution we devise, we have to bear in mind this principle whatever may be the variations or other reservations that we may, for the transitional period, find it necessary to provide.

The third point, of course, upon which we shall have to be engaged—and this seems to me to be by far the most important of the points which we have to consider—is the question of safeguards. As I have already stated, if once we grasp firmly the principle that these safeguards are to be devised in the Indian interest—and I am sure that no one here or elsewhere who is honestly and genuinely anxious that India should be properly governed and well governed and that her aspirations should be met, will dispute it, that these safeguards are wholly intended in the interests of India—if that principle is firmly grasped, and we proceed to apply that principle to every suggestion or proposal that is made to us, it will not be difficult to find a formula which will be acceptable to all. The safeguards and reservations referred to are in respect of such matters as defence, external affairs, the position of minorities, the financial credit of India and the discharge of obligations. On the question of defence and external affairs, I do not propose to say anything now. But I believe I shall have something to say as to the extent to which the Indian Legislature to-day and the Executive Council also have a good deal of power already devolved upon them under the scheme of the Government of India Act; and, if we examine the principle under which this power is already vested in the authorities which act under the Statute by which the Legislature and the executive authority of India have been established, I do not think that, merely because the actual power is exercised by different persons and the actual constitution of the Legislature is made broader and wider, that would affect either the legal position

or the constitutional status that are already provided for the Indian Legislature and the Indian Government.

On the question of the position of minorities, I do not propose to offer any observations at this stage beyond saying that, coming from a Province where happily communal differences have no such prominence as they have assumed in other Provinces, I shall always be ready to co-operate with all sections of the people here assembled in offering such help as I can to devise a plan by which we can get an agreed solution. But I feel that we have now reached a stage in the course of these discussions when it would be impossible for us to await the continual carrying on of pourparlers, in which questions like these will never find a solution because there are sentiments, there are feelings, and there are, may be, genuine apprehensions on both sides, which only trust and confidence can remove. Therefore, I would beseech you, Sir, and other sections to see that we are enabled to come to decisions as quickly as possible in this matter. To me the prompt decision of these questions is as important as the character of the decision taken on these questions. That is all that I propose to say for the present, Sir, on the question of minorities.

As to the other safeguards, so far as I can see, Sir, they are confined mainly to the questions connected with the financial credit of India and the discharge of obligations. After all that has taken place I am certain that there will be absolutely no dispute in regard to the position that, as to whatever obligations are justly due from the Indian Government, there will be no disposition on the part of any government that will succeed it, under self-governing conditions, to repudiate any such obligation; and I hope that the needless excitement, dispute and suspicion that was excited has happily disappeared. As to such safeguards as may be necessary to secure the financial credit of India, those are questions on which I have repeatedly said it must be perfectly possible for those who are concerned with the financial position of India, and also the various commercial interests involved, to sit together at a round table and arrive at a satisfactory solution. After all, I do not think that safeguards in respect of financial credit and the discharge of obligations—or for that matter any safeguards—can be considered to be sacrosanct merely because we provide for them in certain articles of the constitution, and that, therefore, nothing can be done to break them. What is really wanted is good-will and agreement. No articles of a constitution can protect people in such matters. For instance, if a particular article in the constitution, even in regard to currency, is found in actual operation by all parties to be thoroughly unworkable—if we find that it becomes absolutely necessary to change that article of the constitution—then nothing that we have previously provided can make it sacrosanct. Therefore I appeal to the Committee that we should approach this problem, not with a view to get what may be called "Chinese Walls" erected to prevent this being done or that being done, but to get to a proper understanding and to promote an

atmosphere of confidence between the several interests which may be, I conceive, genuinely, but sometimes in a very exaggerated manner, apprehensive of what might happen. I think, Sir, that a frank and free discussion as to what is to happen will go further to remove these apprehensions than any actual cut-and-dried formula which you may afterwards find it necessary to embody in the constitution. As I put it, if Mahatma Gandhi gives an assurance on certain matters, I do not think any article in the constitution would be worth even a hundredth part of what such an assurance would convey to the public. That is all I have got to say at this stage; and I thank you.

Mrs. Subbarayan: My Lord Chancellor, I thank you for giving me an early opportunity to speak to this Committee. I do not wish to take up much of the valuable time of this Committee; I only wish to make a few general remarks on some of the important questions with which this Committee will have to deal. I should like first to join my voice in the general expression of pleasure at meeting old friends and renewing old ties. I think my Indian colleagues will agree with me that we of the Indian Delegation have come back to England, after renewed contact with our people, with a determination really to come to grips with the difficult problems that lie ahead of us. It was, therefore, very reassuring and encouraging for us to be so warmly greeted by our British colleagues on Monday, and we much appreciated the kind words from you, Lord Chancellor, from the Prime Minister, from Lord Reading, and from our late and present Secretaries of State.

May I here respectfully say that we do realise that many changes and vicissitudes have taken place in this country since we last met, and that we sincerely sympathise with our British colleagues in the difficult times through which they are passing. But, though Governments have changed, I think our Conference, and this Committee in particular, may congratulate themselves on retaining the very valuable services of our Chairman, under whose leadership so much was accomplished last year. I think this is a good omen of success for this Conference and Committee.

Another encouraging feature of this Committee is that the Indian Delegation has become more truly representative. The presence of our Mahatma Gandhi amongst us is a most welcome event and one of the highest importance. The Congress view will now be represented by its accredited leader and one who is most fitted to expound its aims and views. The Depressed Classes, labour and women have also representation at this Committee.

May I here say a word of thanks to the late Secretary of State who, I am glad to see, is going to give the benefit of his help and experience to this Committee, and to the Prime Minister, for giving women representation on this most important Committee, the work of which will affect every Indian home and every one of India's 350 million inhabitants. May I also, Lord Chancellor, say that I trust, as an amateur and as one with comparatively very little experience,

I shall at all times have the indulgence of this Committee which is so largely composed of experts. But I think any layman or woman on this Committee can be of some help by representing lay opinion. Though technically we are unskilled, we yet hold very strong views as to the principles on which our future constitution should be formed, and I should like to make just a few remarks on some of these important principles. I am not going into detail, nor will I attempt to deliver an ultimatum, but I would like to indicate to you how my mind is working.

Federation is, of course, the corner-stone on which the idea of a new India was based by the last Conference. I am full of hope that a real federated India will arise out of our deliberations. I feel that a real federation is undoubtedly the quick road to a united India, in which a harmonious and uniform national and cultural development will take place. I think the contribution of Their Highnesses to a scheme for achieving this great national ideal at the last Conference was a great feature. I am sure we all appreciate that Their Highnesses are prepared voluntarily to relinquish some of their powers to a Federal Government to attain this end. As His Highness the Maharaja of Bikaner so strikingly said at the last Meeting, they went along the path that duty and other considerations showed them, in spite of the difficulty and complexity of their task; and I am sure they will do the same till a proper scheme is formulated. May I respectfully tell Their Highnesses that I feel they will reap their reward when a united and prosperous India, in which no doubt the States will play a great part, takes her rightful place among the great nations of the world.

I would also like to say a few words on another question, which affects women in particular; I mean the political status of women in the new India. I should like to urge on this Committee the desirability of inserting a clause in the new constitution for India to the effect that sex shall be no barrier to citizen rights in India. I am not putting forward a novel idea. In most modern constitutions, like those of the Irish Free State, Austria and Germany, such provision is made. I would especially quote Article 109 of the German Constitution, which states that men and women have fundamentally the same civic rights and duties. I raised this question in the Minorities sub-Committee last year, but I should like to urge it before this Committee also. I think that the Committee will realise that such a declaration is but fair and just, particularly in view of the important position that women are coming to occupy in India.

I shall not dilate much on the political activities of our women, because they are well known, not only to you but to the whole world; but I should like to say a few words about their share in administrative work which, like all kinds of silent work, is not so widely known. In all ranks of life they are beginning to play their part. Among the ruling families I could instance Her Highness the Maharanee Regent of Travancore, who during her Regency has

proved that a woman can be a good statesman and an able administrator; and again, Her Highness of Sangli, who we all know is carrying on the administration of the Sangli State during the absence of His Highness here in England. I would like respectfully to mention also the name of Her late Highness the Begum of Bhopal, for whom we have great reverence and admiration.

In lesser walks of life, also, I can tell you from personal knowledge of my own Province, and by repute of other Provinces, of the remarkable public work which women are now undertaking. I can assure the Committee that in my own Province—and I am sure my colleagues from Madras will bear me out—it is quite usual and customary now to have honorary women magistrates and women on public bodies, like local bodies and municipalities, and of course on educational and health bodies. Women doctors are quite frequent and we are even becoming familiar with women lawyers.

I do not think I need say more to represent to this Committee that a clause to the effect that sex shall be no barrier to full civic rights should be embodied in our future constitution.

Then there is another important question about which I should like to say a few words. Many of the greatest and gravest issues at stake at this Conference are to be thrashed out here, and the Conference will probably stand or fall by the measure of agreement which can be reached in this Committee. Not least among these issues is the question of responsibility at the Centre. The previous speakers have already referred to it, but I should just like to make a few general remarks.

I myself admitted, on the last day of the last Conference, that in the Report that was presented to the Conference there were certain features which caused me grave disquietude. I referred to this in my speech, when I said I did not believe that India would accept a form of government which, while conceding the large principles of responsible self-government, contained details and reservations which would make it in reality something different from that. At the same time I believe that, as far as is consistent with our national aspirations, we should try to meet British fears and anxieties. I do not wish to go into details now in this general discussion; but I only want to indicate my uneasiness, and also to say that six months of renewed close contact with public opinion in India has strengthened my views. I am still more confirmed in my misgivings, and I do therefore ask my British colleagues at this Conference to appreciate that it is not the safeguards and the reservations that will sustain the new constitution, but the over-whelming force of a loyal public opinion.

Personally, I cannot believe that the interests of Britain and of India—and I am speaking in the widest and deepest sense of the terms—are incompatible. You told us, Lord Chancellor, at our last meeting that we shall never achieve our ambition unless we understand each other and try to appreciate each other's hopes and

fears. I hope that, in the days and weeks to come, the British will seek to understand the depth and force of Indian national ideals and that we Indians will seek to appreciate British fears and anxieties, and that in the end perfect understanding will cast out all fear and suspicion and we shall thus achieve agreement.

Before I conclude, may I touch for one moment on that most vexed and thorny question, the communal problem. I do not want to say much about it; I should not even have referred to it if it had not already been raised in this Committee. I do not want to say much about it as it is really a matter for the Minorities Committee, but I do just want to say this. I sincerely regret that, in spite of the efforts of some of our wisest and most distinguished countrymen, a settlement has not yet been reached. I do not want to probe present fears in order to ascertain whether they are ill or well founded; I will only say that it is obvious that these fears do exist now. There is also practical unanimity among all sections of our people that legitimate fears should be allayed. I earnestly hope, therefore, that a settlement may be reached—one that may allay present fears and anxieties and yet facilitate a fusion of interests and sentiments in the future. I hope and believe that in the new India these fears will rapidly disappear in a common desire to make our common country prosperous and contented at home, honoured and respected abroad. I earnestly hope that this Conference and this Committee will evolve such a scheme of efficient national government for India as may give confidence and security to all sections and classes of her people, together with the hope that full national unity will be speedily achieved.

I have made a short reference to some of the most difficult problems with which this Committee will have to deal. I should like to conclude by saying that I personally firmly believe that a peaceful, honourable and final solution of these problems, based on reason, does exist; but it has to be earnestly sought, and I sincerely wish that this Committee, representing as it does all sections of opinion in both our countries, and under Lord Sankey's able and sympathetic guidance, will find that solution.

Mr. Joshi: I am grateful to the Prime Minister for giving me an opportunity to take part in the work of this Committee, and I am very grateful to you, Lord Chancellor, for giving me this opportunity at this early stage to place on record some of my views on the principles of the constitution which should be adopted for India. I am speaking in this Committee not as a constitutional lawyer nor as a constitutional professor, for the very good reason that I am neither the one nor the other. But, Lord Chancellor, I am speaking here as a humble representative of the working classes of India, and I shall speak with that amount of common sense with which I am endowed, and with that knowledge of the mind and the heart of the working classes of my country that I have acquired.

At the outset let me welcome the fact that, after all, we are going to have in India one national government for the whole of

India. We welcome the formation of the Federation. We welcome the proposal that the Indian States are to join in the constitution of all India. We fully appreciate the action of the Princes gathered round this table in showing their willingness to join in a common constitution for the whole of India. We fully appreciate the wisdom with which, both in self-interest and out of patriotism, they showed willingness to join in framing a common constitution. Let me assure Their Highnesses who are gathered here that we have no desire to dictate to them as to what administration they should have for their internal affairs. If we refer to some matters which they may consider as interference it is due to the fact that, just as they themselves made it quite clear that they would like to federate with self-governing British India, so we too many desire to federate with self-governing British India, so we too may desire to federate therefore, that we have absolutely no desire to interfere with their internal affairs; and I would appeal to them not to misunderstand us but to appreciate the point of view which we propose to place before this Committee.

Let me also say that when we begin to frame a constitution—a joint constitution for British India and for Indian India—let us start with full mutual confidence. Let us not say at the outset that we shall start with only a limited confidence and leave it to time for the development of fuller confidence. I believe, Sir, that if we ourselves feel to-day that we connot place the fullest confidence in each other, we shall not succeed in framing a constitution which will be acceptable to all sides. I therefore appeal to all here to start out work with the fullest mutual confidence.

Sir, if during the course of discussion in this Committee, some members feel that certain members are impatient, let me assure them of one thing, that our impatience is born of one desire; and that desire is that, when we start our new constitution, for some years to come we should have the fullest opportunity for constructive work for the people of India. Some of us believe more in constructive work than in anything else. We therefore feel that, when we are framing a constitution, we should not start with the idea that an agitation will take place and developments arise and that things which we do not get to-day may be obtained in a few years' time. I believe, Sir, that that is a wrong method of proceeding. When we are framing a constitution let us frame a constitution which will not require great agitation within a very short time. Let us get some breathing space to do constructive work which many of us want to do for the people of our country.

If we want a real national government for all India, I feel that that national government should be the sovereign or the supreme authority in the land. I do not think it will be for the good of India if all the constituent elements claim to be the sovereign or the supreme authority in the land and only show a desire to make common cause for a limited purpose. I believe that, if India is to

derive good from a national constitution, those who form the constituent parts of that India should regard the federal or the national government as the sovereign or the supreme authority.

I also feel that, if we are to have a real national or federal government, we must have a common citizenship. To me a federal government or a national government for the whole of India without a common citizenship, or with different citizenships, is not thinkable. I therefore feel that, if we are going to frame a constitution for the whole of India, that constitution should provide that there shall be a common citizenship—a common Indian citizenship for the whole country. I need not, at this stage, mention what will constitute a common citizenship. I may say that common citizenship ordinarily will be constituted by people living under a common law, by people who can go from one part of the country to another without losing their citizenship.

Sir, at this stage I do not wish to go into the details of the constitution, but let me say a few words on the main principles. With real federation there must be a desire on the part of the constituent parts to surrender not as little as they dare but as much as they can to the central authority. If we start with this principle, I feel that the distinction which is made between Central and Federal subjects will be found to be unnecessary. I feel that subjects which are regarded as being suitable by their very nature to be Central should all be Federal, because after a good deal of experience and discussion it has been found that these subjects cannot be Provincial; and if they cannot be Provincial, in my humble judgment they should all be Federal if we are going to have a real Federation for the whole country.

Without going into the detailed list of Federal subjects, I would suggest here that, out of the subjects which are not yet made Federal, I should mention the criminal law. A federation without a common criminal law, in my judgment, will not be a real federation.

Coming to the subject in which I am especially interested, it is also necessary for me to state that I feel that a federation which will not be able to legislate on labour matters will be a federation in which the working classes of the country cannot be expected to be much interested. Similarly, we would like, from the point of view of the working classes, that the federation should be in a position to consider the ratification of international conventions on labour subjects.

The second point upon which I would touch at this stage as regards the federation is that we are anxious, when framing a constitution for the federation and for a national government, that that constitution should be as democratic as we can make it. The constitution should represent the will of the common people of the country. For this purpose we would like the legislative organisation to be fully elected. I again assure Their Highnesses on this point that we have no desire to dictate to them what form of admin-

istration they should have within their territories; but they will not misunderstand us if we expect that the responsible government in India should not be watered down by the lack of responsible government within the territories of the Princes. We would like that the executive government should be thoroughly and fully responsible only to the popular legislative body. We would also like that the financial responsibility should be the sole concern of the popular Chamber.

There is one point which I should mention at this stage, because I feel it is necessary that our attitude on the main points should be made clear, and that point is the claim made by Their Highnesses for weighted representation in the legislative bodies. I feel that it is difficult for any one unit of a federation to give weightage to any others. The federation is going to be formed by various units that are willing to federate. It is not a federation of British India with Indian States—two parts organised fully into their separate organisations. It is a federation of many federating units. I do not wish to speak at length on this point, but I thought it was necessary that my attitude on this question should be made clear at the very start.

I do not wish, Lord Chancellor, to speak on other points, at this stage, which are contained in the Report of the Federal Structure sub-Committee. I fully share the views of Sir Tej Bahadur Sapru and Mr. V. S. Srinivasa Sastri on many points which are contained in the Report. In conclusion, I am very thankful to you for giving me this opportunity of speaking.

H.H. The Maharaja of Rewa: My Lord Chancellor and Gentlemen, As a new member of the Federal Structure Committee, I should like to join my other colleagues in thanking you for the welcome you have extended to those of us who for the first time have had the privilege of being called upon to serve on the Federal Structure Committee.

I am sure it will be within the recollection of all those gentlemen who gathered round this table some eight months ago, that even though different interpretations may have been given to my previous two speeches, I said nothing more and nothing less than this, that we should proceed with due caution and sound conviction. The one point, however, upon which I laid stress in the same speech was that the relations of the States with the Crown are individual; and I venture to repeat this statement now because on this basic principle my views remain unchanged. Since my return to India last February I have had the privilege of discussing the future constitutional problems with my brother Princes and eminent politicians of British India, and I have been assured on many occasions that my friends of British India do appreciate that our good will towards them and our firm resolve to serve our Motherland are facts beyond doubt. I have also been assured that our friends in British India do fully recognise the sanctity of Treaties and of our sovereignty. No one is more anxious than myself

to see all our difficulties solved. To restore peace and happiness to India in such a way that all the interests are duly safeguarded is the aim of us all. And, notwithstanding the many difficulties which confront us I feel sure that on this main issue, the advancement of India, we are all in accord. The spirit of compromise and mutual trust is, I feel sure, a very real necessity in order to bring our deliberations to a happy and lasting conclusion.

I feel that the responsibility of representing the conservative point of view among the States, which has fallen upon me, is a delicate one, and I should like to say a few more words before I close. We all realise full well the difficulties of one another, and we should therefore strive hard to evolve a constitution which will not only be impressive to look at but will also be practical, workable, and, above all, acceptable to all concerned. I trust with your valued assistance, My Lord Chancellor, we shall reach a conclusion that will not only bring peace and prosperity to India, but will be a tower of strength to the great Commonwealth of Nations over which our beloved King-Emperor reigns.

Sir Provash Chunder Mitter: Sir, As a new member of the Federal Structure Committee I am thankful to you for giving me this opportunity of expressing my views with regard to the deliberations of this Committee in session. I may begin by saying that I do not propose to take up much of the time of this Committee, but I desire to make a few general observations on the picture as it emerges from the Report last year. Then I desire to draw the attention of my fellow members to certain points to which, in my humble judgment, we should give pointed attention.

I believe, Sir, we should approach the question of federation from one point and one point only, namely, what is most conducive to the peace and happiness of India, and how to attain that very great object by methods of persuasion and peaceful discussion rather than by direct methods; or, in other words, by constitutional evolution rather than by strife in the physical sense between the citizens of that great country which I have the honour and privilege to represent to-day and the citizens of your country. Approaching the question from that broad aspect, I may at once say that I feel attracted by the kind of federation that was suggested during the last Session—not that I do not find anomalies and difficulties; not that I say that the broad outlines of the scheme that was suggested (and they are only broad outlines) are free from many difficulties and anomalies; but I hope and trust that the members of all the Delegations to this Committee, British and Indian, will strive to attain what you, Sir, suggested last Monday —unanimity. And, in my humble judgment, the coping stone of that unanimity should be the interest of India first, and, next to the interest of India, the interest of Great Britain as the head of the federation of the British Commonwealth of Nations which many Indians are anxious to join as an equal partner.

Beyond giving this general approval I desire to reserve my opinion on all questions of detail because some of these questions of detail are of paramount importance. I will next proceed to mention some points that strike me as being matters requiring special consideration.

The first point to which I would like to draw the attention of this Committee is this. It was suggested that the Ministry constituting the Federal Executive will be removable on a vote of two-thirds passed by the Joint Session of both Houses. It will be necessary to come to definite conclusions as to what the position will be if the Budget is thrown out by a bare majority, or if the Ministry fail to pass an essential measure because of the vote of a bare majority, although the critics of the Ministry may not be able to obtain a two-thirds majority of both Houses. As regards the Budget, it was suggested, amongst others I think, by my esteemed friend Sir Tej Bahadur Sapru, who did so much to bring about a new picture last session, that we may follow the Japanese Constitution, namely, that the previous year's Budget will be automatically restored. That may serve our purposes in a good many cases; but even then difficulties may arise, because the sum voted in the previous year on occasions may not be sufficient for the essential demands of the administration. As regards failure to pass an essential measure, the procedure of the Japanese Constitution does not help us. If the Executive composing the Ministry be removable by a two-thirds majority of both Houses, and if they are unable to pass an essential measure, it is not difficult to perceive that some very anomalous positions may arise. Whatever may be the conclusion at which you ultimately arrive, this point requires very careful consideration, because we must have a constitution which will work even under difficulties.

Another point which I think we may well discuss is the position of the Ministry with regard to subjects, on the one hand, which are predominantly British Indian, and, on the other hand, with regard to subjects in which the Indian States may take a predominant interest. It has been suggested that the representatives of the Indian States would not ordinarily take part in discussing and voting on British Indian subjects, and, similarly, presumably, the representatives of British India should adopt the same attitude with regard to subjects which predominantly affect the Indian States. On the question of a motion of no-confidence, however, both sides, I assume, have to discuss and take part in the voting. I do not think I am called upon to develop the point further at this stage, but one can well understand the implications of the point mentioned. That point also we have to consider, and as to it we have to come to a workable decision.

I find, Sir, from the heads of discussion that were referred to the sub-Committee last Session that the question of the distribution of the financial resources between the Federal and the Provincial Governments did not directly arise. I am glad to note that it is

now sought to remedy this omission. In this connection I would like to stress the importance of leaving sufficient resources to the Provincial Governments. The Federal Government no doubt should have adequate financial resources for the due discharge of the responsibilities cast upon it; but, subject to that condition, every effort should be made to improve the finances and resources of the Provincial Governments. The position, Sir, in this connection, of Income-tax as a source of revenue to the Federal Government has an important bearing. I am glad to note that you, Sir, pointed out at page 30 of the Report that your provisional opinion was that Income-tax in a federated India should become provincialised and should not be used for financing the administration of the Federal Departments. It has been pointed out in the Simon Commission's Report that the average income of an Indian citizen is only about £6 a year, whereas the average income of a citizen of this country is £100 a year. Many students of Indian economics are of opinion that the average income of an Indian citizen is much less than £6 a year; but even if the average income be £6, what must be the income of 90 per cent. of the population who are admittedly very, very poor indeed? You in this country, with your problems of unemployment and allowing your masses a reasonable standard of living, ought to realise what it must mean to men who have to exist—I do not say live—on say £2 or £3 a year. In this connection, Sir, I hope the members of this Committee will bear in mind the importance of setting free as much of the Income-tax as possible for improving the human unit in that part of the world—India—which I can call my home. If we desire to approach this question from a statesmanlike point of view, we have to come to the conclusion—there is no escape from the conclusion—that these Provincial Governments which will be charged with improving the human unit in the Indian nation should have more money than it has been possible for them to have in the past.

The Simon Commission's Report has further pointed out that whereas the expenditure on education in this country is £2 15*s.* 0*d.* per head, it is only 9*d.* per head in my unfortunate country. The expenditure on sanitation, agriculture, and cottage industries is even far less. With better resources, the Provincial Governments will be in a position to improve the material, the intellectual and the moral condition of the masses and truly lay the foundation of a National Government in a country like ours, predominantly agricultural and poor. That is a problem which you must always bear in mind.

I desire next to draw attention to the question of setting up a Supreme Court. If the Supreme Court be set up, should its powers and functions be limited to questions arising out of constitutional disputes only, or should it also have power to deal with appeals in the ordinary civil and criminal cases? In that connection the question will naturally arise as to whether the Judicial Committee here should retain its present jurisdiction or not. I express no opinion at this stage on that point. I know that no final conclusion has

been reached as to whether there should be a general provision in the proposed Act for the amendment of the constitution. If there is to be one, the question arises as to what should be the broad outlines of such a provision: should we follow the precedent of Australia and South Africa, or should we follow that of Canada and omit to have a specific provision? Here, too, I do not propose to express an opinion at this stage.

Lastly, there seem to be two points which require careful attention, namely the question of residuary powers and also the provision, if any, about overriding powers. The last-mentioned point at once raises the difficult question of a possible conflict between real autonomy in the Provinces and the powers of the Federal Legislature and Executive.

I will conclude these observations by expressing the hope that the discussions of our Committee will be fruitful in results. If, unfortunately, we fail, the consequences will be disastrous not only to my country but to the world at large. But should we fail? We have here with us a great leader who even his most adverse critics must admit can sway a larger number of human beings than any other leader in the world's history has ever swayed. We have at present in this country a National Government, actuated by the high and noble idea of serving the Nation before Party. Under these circumstances I hope and trust that, with God's help, we shall succeed. We must succeed!

(The Committee adjourned at 1 p.m. and resumed at 2-30 p.m.)

Mr. Zafrullah Khan: Lord Chancellor, I am deeply grateful to you for having accorded to me this early opportunity of submitting to you and to the Committee a few observations on the work which the Committee succeeded in accomplishing during its sittings in the last Session. May I, My Lord, give here expression to my deep sense of admiration for the uniform ability, courtesy, patience and tact which Your Lordship has, throughout the proceedings of the Federal Structure Committee, shown and extended towards the members of the Committee, and which were so largely responsible for the harmonious and successful working of the Committee in its last Session, and to which every page of the printed report of the proceedings bears such eloquent testimony.

May I also be permitted, My Lord, to express my sense of gratification that it has been found possible so to enlarge the scope of the Conference, as well as of this Committee, as to include within its membership the representatives of interests that were either not represented at all in the Conference previously or not adequately represented. And, in this connection, may I give particular expression to our satisfaction and pleasure in finding in our midst this morning Mr. Gandhi, the representative of the largest and the best organised political association of India. Whatever differences one may have with Mr. Gandhi—and be it remembered that it is of the very essence of democracy that there should be differences—there

is nobody here or elsewhere who would be disposed to deny Mr. Gandhi's claim (not that he makes it), or to be little it, that he has rendered inestimable services to his country and to his community during the last two decades or so. One feels therefore that the circle of the Round Table is now complete, and that we may go forward toward the conclusion of our task without any misgiving that the vast and noble edifice that we hope to be able to raise as the result of our labours here shall not afford adequate shelter to all the various interests and all the teeming millions of India.

My Lord, I do not propose to make a general speech with regard to the various principles involved in the framing of a constitution, more particularly a constitution for a country like India. I desire, with your permission, to confine myself to submitting certain observations with reference to the matters actually dealt with in the two Reports of the Federal Structure sub-Committee, in which are embodied the conclusions arrived at by the sub-Committee during its sittings in the last Session. Happily, for what I have got to say I shall be able to find for the greater part of those observations, not only the material but also the language that I wish to employ, within the body of those Reports. This may involve a certain amount of reference to, and perhaps a little repetition of, the contents of the Reports. But having regard to the fact that I had not the honour to take part in the discussions of this Committee in its last Session, I am sure you and my fellow members of this Committee will bear with me and will extend to me the indulgence of listening to those repetitions.

Before I go on to submit my observations, I wish to stress some of the reservations which are already contained in those Reports. I agree entirely with the view that, in devising the details of the constitution of India, India's own practical needs and conditions must be the governing factors, and that no constitution, however theoretically perfect and however closely modelled upon precedents adopted elsewhere, is likely to survive the tests of experience, unless it conforms to the needs indigenous to the country which adopts it, and unless it is capable of modification as the character of those needs changes in the working of the constitution.

I may also, before I go on to submit my observations, claim the right claimed by other members of this Committee that, whatever I may submit this afternoon or during the subsequent course of discussions in this Committee, when I come to consider the complete proposals for the Federal Constitution I shall be at liberty to modify or change any provisional assent that I might in the earlier stages have given, and I shall have the right of modifying my opinion before the final picture is completed.

I wish also to emphasise more particularly the reservations with regard to the communal question to which expression was given in the sittings of the Committee last Session and has been given this morning. I associate myself with what was said by Sir

Muhammad Shafi and Mr. Jinnah during the first sittings of this Committee; and I wish to make it clear that, as far as I am concerned, I cannot consent finally to frame any constitution unless the Hindu-Muslim question is settled, and that, in my opinion, too, as Mr. Jinnah said, no constitution would work unless it embodied provisions which would give a sense of security to the Muslims and other minorities. To this I wish to add, in the words of the last paragraph of the Report of the Minorities sub-Committee, paragraph 18, that Muslims could not consent to any self-governing constitution for India unless their demands were met in a reasonable manner.

Subject to these reservations, I might proceed now to make those observations, the greater part of which will be in the nature of expressing a clear agreement or disagreement with the main conclusions arrived at during the earlier sittings of this Committee; and, with regard to matters as to which I have no definite opinion to offer, I shall reserve my opinion just as much as I reserve it naturally on questions to which discussion has not yet been directed.

I am in general agreement with the ideal that this Committee has laid down with regard to the future constitution of India, that is to say, the ideal of federation. I am also in general agreement that the component elements of this Federation shall, on the one hand, be the federating Provinces of British India, and, on the other hand, such Indian States or groups of States as may enter the Federation. I am compelled also by circumstances to agree to what is said in the fourth paragraph of the Interim Report, that, so far as British India is concerned, the federating organisation will be neither the Government of British India as it exists at present nor autonomous Provinces released from the Central tie; but I do wish to give expression to the hope that, as time passes, the Federal tie will take the place of the Central tie. With regard to the matter referred to in paragraph 6 of the Interim Report, one, of course, notes the unanimity of Their Highnesses that, in their opinion, the method by which the States' representatives should be chosen will be a matter for the States themselves. I express on this no final opinion at present, although one would have imagined that the method by which representatives shall be chosen for the Federal Legislature was a question with which pre-eminently those were concerned to whom has been entrusted the task of devising the Federal constitution. But I wish to draw attention in this connection to the fact that, whereas here the view has been expressed that this shall be a matter for the States themselves, in paragraph 26 of the Second Report there is an implication that that method shall be nomination by Their Highnesses themselves, inasmuch as it says:

> "And the sub-Committee have no doubt that the Rulers of the Indian States, in selecting their representatives, will ensure that they are persons of similar standing".

As I have said before, on this question I at present express no final opinion.

With regard generally to the question of federation between British Provinces and Indian States, I have at present this observation to offer. We are all aware that in the Schedules and Appendices annexed to these two Reports there are certain subjects which have been described as Federal and there are certain subjects that have been described as Central. In one of the Schedules there are suggestions as to which of the Central subjects should immediately be provincialised. Mr. Joshi, I believe, has given expression to the view that, in course of time, he hopes to see all Central subjects federalised, inasmuch as experience has shown that all those subjects that are at present Central cannot be provincialised. With all respect to Mr. Joshi, I am not willing to accept that statement. I too express the hope that in course of time there shall disappear that category of subjects which is described as Central, and that it shall disappear because some of the subjects have been federalised and the residuum have been provincialised. Here I feel a certain amount of difficulty, and the difficulty is this. With regard to some of these subjects, after a perusal of the printed report of the proceedings of this Committee I feel that Their Highnesses are not in any eventuality likely to agree to the administration of these subjects being federalised; and, if that is not done, then it follows that, unless that part of Central subjects is provincialised, we shall for ever have these three categories of Federal, Central and Provincial subjects, which I cannot readily accept as a permanent arrangement.

Coming to the Second Report and to the most important part of that Report, which is likely to engage the attention of this Committee for a considerable time, I accept generally the principle of responsibility of the Executive laid down in paragraph 8, as well as generally the definition of that responsibility laid down in paragraph 10; but I cannot in its entirety accept the method of providing for this responsibility laid down in paragraph 9. In this connection I would venture very respectfully to associate myself with the observations attributed to Lord Peel and Sir Samuel Hoare, contained in paragraph 2 of the Report. I am unconvinced that the kind of Executive envisaged in this Report can be successfully adapted to the special conditions of an all-India Federation. I therefore desire to see further explored methods for increasing Indian control over the Federal Government that are better suited to all-India needs than those founded upon British precedents alone. Although it is not my desire to adduce arguments to-day in support of the views that I am expressing, I might make reference to the fact that it is visualised that the Central Indian Cabinet shall have among its members representatives of the States as well as one or more Muslim member or members. That being so, I cannot see how this doctrine of the method of enforcing responsibility of the Executive to the Legislature upon the British model could be carried to its logical limit. As my friend and colleague Dr.

Shafa'at Ahmed Khan submitted this morning, situations may arise in which modifications of that doctrine in practice may become necessary.

With regard to the special powers of the Governor-General contained in paragraph 16, all that I wish to say at present is that I would desire to confine those powers within the very strictest limits of the phraseology employed in that paragraph.

With regard to the special provisions for finance contained in paragraph 18, I am not at present prepared to go beyond expressing my agreement with the fundamental condition for the success of the new constitution, which is that no room should be left for doubt as to the ability of India to maintain her financial stability and credit both at home and abroad.

My next observation relates to the second part of paragraph 26 of the Report, which is concerned with the method of election to the Upper Chamber. The opinion of the sub-Committee is that the British Indian members of the Senate should be elected by the Provincial Legislatures, and I agree with that; but the Report goes on to lay down that this shall be done by the method of the single transferable vote. I am afraid that would be found impracticable, having regard to some of the safeguards that are considered essential by the minorities. If those safeguards are to be enforced the exercise of the single transferable vote may not be possible.

With regard to the very important matter dealt with in paragraph 28—the distribution of seats in the Upper Chamber—I do not at this moment wish to say anything more than this, that it must be clearly understood, with reference to these questions, that the component elements of the Federation have been described in this Report not as British India on the one hand and the Indian States, either individually or as one group, on the other, but as the British Provinces on the one hand and the Indian States on the other. In considering the question of whether any weightage should or should not be allowed to any group, that consideration must always be kept in mind. Under this combination there would not be any preponderant group. As I have said, I would always be prepared to consider with an unprejudiced and sympathetic mind any proposals that come up for discussion before this Committee, but I am not at present persuaded that what is laid down in this paragraph is a necessary result of federation between the Indian States and the Provinces of British India.

On the question of the means of securing stability for the Executive at the Centre, I would again not express any final opinion, except that I would be prepared to consider with sympathy any proposals which would secure the stability of the Executive without unduly interfering with the responsibility of the Executive towards the Legislature.

Finally, in connection with the control by the Federal Government over the Provincial Governments, I wish to say that al-

though, again under the stress of circumstances, it may be necessary to agree to a certain amount of control being exercised by the Federal Executive over the Provinces, as laid down in this paragraph, I would wish to restrict it to the strictest possible limits permitted by the phraseology employed in this paragraph, and I would resist any attempt to widen the scope of the interference. I agree that in matters affecting more than one Province of British India—and only in such matters—there must be some authority capable of resolving disputes and of co-ordinating policy when uniformity of policy is in the interests of India as a whole. I would not desire the Federal Executive to have any powers beyond those necessary to regulate or co-ordinate matters of this nature.

In conclusion, I should like to submit this. A question was put this morning as to whether the views that were being expressed from this corner of this rectangular table were the views of individual members or were views offered on behalf of those whom we have the honour to represent. In reply to that question, and as a matter of general information, I desire respectfully to submit that the views that have been expressed or which may be expressed from this corner of the table are views expressed on behalf of those whom we have the honour to represent.

I thank you, My Lord, and my fellow-members of the Committee, for your and their indulgence in according me a patient hearing.

Sir Maneckjee Dadabhoy : I also desire to express my gratitude to you for the opportunity you have given to newcomers to express their opinion on the work done at the last Session of the Federal Structure sub-Committee. This wise decision of yours, Lord Chancellor, resulted this morning in the eloquent, interesting and instructive speeches which we have heard.

My claims to participate in the discussions in this Conference are more or less of a slender character, except for the fact that I have been in close contact and close association with three distinct epochs in the legislative history of India. I have been associated with the Lansdowne Reforms, I have taken part in the Morley-Minto Reforms, and I have helped to work the Montagu-Chelmsford Reforms. It is the little experience which I have gained through a long period of stewardship in the Legislature of the Government of India which gives me some right to speak on this occasion.

I must first associate myself with the last speaker in expressing our gratitude to you, Lord Chancellor, for the great ability and skill with which you have guided the deliberations of this Committte. But for that spirit of moderation and sympathy which you have shown to every section represented here, the result might possibly have been very different.

Before I proceed to the discussion of certain subjects, I also wish to express my gratitude to the Prime Minister for inviting me to attend this Conference. I should also like to express my

satisfaction at seeing here two of our distinguished citizens, Mahatma Gandhi and my old esteemed and respected friend Pandit Madan Mohan Malaviya, co-operating in the deliberations of this Conference. I feel certain that Mahatma Gandhi's presence will enable us to come to some agreement, and I feel convinced that the strongest political party in India will have no occasion hereafter, even if the Mahatma is not in a position to obtain all that he wants, to assert that their views and opinions have not been listened to by the Conference. At any rate, whatever the ultimate judgment of this Conference may be, it cannot be said that the case of the Congress Party will go by default.

I must now come to a discussion of the real problem before us. We have now come to a unanimous decision on the question of a Federal Legislature. That question, to my mind, is now *res judicata*. That question must now be taken as a settled fact; and on that assumption I shall proceed to discuss some of the points involved in the Reports of the Federal Structure sub-Committee.

At the same time, I would be acting as a hypocrite if I failed to state that I am neither enamoured of nor in ecstasy about the formation of a Federal Legislature. I fully realise and can visualise difficulties in the successful working of a Federal constitution from my past experience of politics in India. The success of a Federal constitution will not only depend on the efficiency with which we draft a new law constituting the Federal Assembly, but it will very considerably depend on the harmonious working of that constitution. We cannot fall back upon the precedents of other countries where federal legislature have been established. We cannot fall back on the British parliamentary system to find a solution in the case of India. The peculiar circumstances of India, the divergent interests, the conflicting religions and conflicting ambitions of the people, make the task more difficult and more onerous. It is in that way that I look upon the proposed Federal constitution; and if I am not enamoured of it, and if I do not feel in ecstasy over it, it should be realised that, at this stage, I do not propose in any way to withhold my support from it. I am quite prepared to give my adhesion to the new constitution, based, as it is, on the co-operation of the Indian States, my British Indian countrymen and the Crown. But in the new constitution which we shall have to work, a great deal of mutual concessions and mutual sacrifice and mutual trust will be necessary; and if a constitution is to be framed which shall result in successful working, it will be necessary that, above all, there should be complete trust by one party in another party. The present conflicting elements which have divided the administration of India up to now will have to be discarded. It is in that light that I feel gratified that the Princes have agreed to come into this great Federal constitution and have thus saved a really critical situation. I admire the self-sacrifice; I admire the patriotism of the Princes in coming into that Federation. It would not have been possible, in face of the Simon Commission's recommendations, to arrive at a unanimous constitution without the help of the Princes. I am not

prepared to say that the Simon Commission was entirely unwarranted or unjustified in coming to its conclusion and in not recommending responsibility in the Centre. There is a great deal of cogent force in what they have said; and, but for the events that have happened lately, I personally would have been opposed to a Federal constitution. But, Sir, the position has been made clear by subsequent events. The Indian Central Committee recommended some measure of responsibility in the Centre. The Government of India, despite its adverse opinion regarding the dyarchical form of Government and the opinions of all Provincial Governments against the dyarchical form of government, had in their Despatch to recommend a system of dyarchy in the Centre. The Prime Minister made it perfectly clear in the House of Commons, after the dissolution of the last Session here, that whatever may be the position we shall have now, by hook or by crook, to give to India some measure of responsibility in the Centre. I will quote a small passage from the Prime Minister's speech delivered in the House of Commons. He stated:—

> "I have come to the conclusion that even if British India alone came into the confederation or the question had to be considered by us, we should have had, by hook or by crook, to devise some means of giving some responsibility to the central Government."

Sir, those are commendable words; and it is because I now feel that it is impossible in India to have any other form of government, because I now feel that it is impossible in India to have any harmony between different parties and make any form of government a success, that I agree to this Federal constitution; and I feel convinced that my countrymen will not lag behind either in patriotism or in service to their country to see that, when the new constitution has been framed and settled, it is successfully worked.

Much will depend on the action taken by this Government. I consider it a very propitious time that we are met here during this month. I consider that the great crisis which has involved England, and which has resulted in the formation of a National Government is a blessing in disguise. I feel certain that now the combination of the three parties—the Conservative, the Liberal and the Labour Parties—will evolve a constitution during their term of office. They will hasten to form a constitution, because it is perfectly clear that, if a constitution had been framed by one Party Government, it would have been opposed by other Parties in Parliament; but now, with the co-operation, sympathy and action of the combined three Parties, the future of India should be easily settled.

My Lord, we must now proceed to action. In the work of the last Conference—and I may say that I have very closely followed the work of the last Conference, though I had not the honour of being present—may I say that there was too much of everything provisional in the proceedings at the last Conference.

The Conservative Party said: "We cannot say anything definitely just now; fill in the picture and then we will decide." The Liberal Party joined in the formation of a Federal structure conditionally. Not only is that so, but individual members whose speeches I have perused have all expressed provisional agreement. This sort of provisional agreement will not avail the country. We must now come to some satisfactory and immediate solution of the different problems that await discussion. Once we do so—once we come to something definite, something conclusive—we shall have gone far towards the accomplishment of our aim.

Sir, at the last Conference the Prime Minister, in his farewell speech, said:—

> "Now, we have gone as far as we can go at this moment. You have to go back to India; we have to go back to our own public opinon. You have spoken here subject to reconsideration, subject to the reaction which your public opinion will show to your work; we, Government and Parliamentary representatives alike, have spoken in the same way, and we must also listen to reactions. We must also explain and expound and defend; we must also make ourselves the champions of our findings, and do our best to bring our people along with us in our pilgrimage of hope to their conclusion."

But this work which all the Parties promised, I regret to state, has not yet come to fruition. Nothing has been done. I am not aware of the Princes having come to any definite conclusions regarding their numerical strength, regarding their representation in the Lower and Upper Houses, regarding the conditions under which they propose to enter the Federatoin.

Of course, they naturally made three cardinal conditions, and nobody could question the propriety of those conditions. The first was that the Federal scheme to be acceptable, must also guarantee the internal autonomy of the States and strict adherence to Treaty engagements; the second was adequate and effective representation of big and small States in the Federal Legislature; the third was reservation of personal and domestic matters of Rulers for decision by the Viceroy as the representative of the Crown. Those are the cardinal conditions under which the Princes would join the Federation. Nobody here can doubt the propriety of those conditions. My friend on the left this morning spoke of the conditions under which both parties were to come in. It is true that the States would not allow us to interfere with the internal autonomy of their administrations. It is perfectly right and legitimate that British Indians should resent the interference of the Princes in matters purely domestic affecting British India. But at the same time, My Lord, I cannot refrain from stating that such a conclusion is based on very weak foundations. Such conclusions cannot be carried to any length. If the Princes combine and join with British India in a Federal Legislature, the civilising influences of

the Federal constitution and the actions of the Federal Government must have their effect on the Native States. Those influences must percolate through the framework of the Indian States. No Prince, however autocratic he may be, can prevent the penetration of these influences in his State. Therefore, if the Princes come into this Federation, they must come with open eyes; they must come with a decision and a determination to give, in time, the same powers, the same privileges and the same liberties to their own subjects. My Lord, I have not the slightest doubt that Ruling Princes like the Maharaja Gaekwar, the Maharaja of Bikaner and the Maharaja of Mysore, who have their own Legislative Councils and who work more or less on the lines laid down in the British Constitution, will be the first to realise these great difficulties and will extend to their subjects those powers and privileges of representation which are given to British Indian subjects. But I must state that, in matters of this character, for the harmonious working of a Federal Indian Legislature, it will be essential for the Princes to bear in mind that their subjects are made of the same human clay as the British Indian subjects, that they have got the same rights, ambitions and aspirations as the subjects in British India.

My Lord, there are one or two other matters on which I would like to say something. I know that I shall have other opportunities of speaking at considerable length on various important matters which will come up for discussion later on; but I want it to be distinctly understood that I shall give my adherence, my adhesion and support to this Federal constitution only on this distinct understanding—that the safeguards which were settled at the last Session are religiously and scrupulously observed. My friend, Mr. Rangaswami Iyengar, spoke this morning about financial safeguards, and referred to that famous document, the Irwin-Gandhi Pact. He said that there is a clause in that document which says that the safeguards should be in Indian interests. My Lord, any man acquainted with finance, any man who really knows the operations of the laws of finance, any person who understands the intimate connection between England and India in the matter of finance, will state that it is simply a jugglery of words to say that Indian interests are different from British interests. I for one say that there is no difference at all between British and Indian interests; they are indentical to my mind; the one cannot exist without the other. Indian financial safeguards will be necessary both in the interests of England and of India. It is quite a different matter if my friend had on his mind ideas as to tariffs or customs duties. The whole or the major portion—90 per cent.—of our Indian debt is productive debt, such as for railways, irrigation and other public works. Those works have been undertaken largely with British capital. We need the service of British capital for the advancement of India; and if any constitution is framed which overlooks this important fact, which makes any difference between these two interests, that constitution is bound to come to grief. Unless there is mutual co-operation,

mutual understanding and mutual sympathy in these matters, you will not settle here the question of Indian finance. I shall have other opportunities of speaking on this subject at length, when I speak on the financial safeguards that will be necessary. For the present I will say that the reference which was made by my old and esteemed friend, Mr. Rangaswami Iyengar, was a little out of place.

I also heard him say that we should pay our just dues. I do not know what is meant by " just dues." Who is to sit in arbitration? I have heard a great deal about the Report of the Debts Committee which was appointed by the Congress; but I have great confidence in the sanity and sound judgment of my countrymen. I have great confidence in the sanity and sound judgment of most of the members of the Indian Legislature, and I know that India as a whole will not give any countenance to any proposal which has the effect of repudiating the debt of India even to the smallest extent. In all honour, India, which after all has always honoured its obligations, will maintain its integrity in that respect.

Various questions were raised this morning, and I do not now desire to proceed with a retrospect of those questions. Many of the speakers who preceded me have explained the situation. There were, however, one or two remarks made about the communal question to which, being a neutral, I will take the liberty to refer. Mrs. Subbarayan, with firmness but with great sweetness of language appealed to everybody to settle this most important question, which in fact forms the keystone of all future reforms. I was sorry to hear my friend on my left (Mr. Zafrullah Khan) say that, unless the Hindu-Muslim question was settled, it will be difficult to agree to any constitution.

Mr. Zafrullah Khan : It will be impossible.

Sir Maneckjee Dadabhoy : My friend says it will be impossible. I say with great respect, but yet with great emphasis, that if we approach this question in that way we shall never be able to solve it. I have great confidence that, with the presence of Mahatma Gandhi here, this question may yet be solved. I have great confidence that, with mutual co-operation and with a little give and take, we may yet be able to come to some agreement acceptable to these two great parties, the Hindus and the Muslims. I still hope that, with your assistance, Lord Chancellor, and with that of the other members of the Cabinet who are here, we may come to a solution of this problem. We must not allow this problem to stand in the way of reforms or of a new constitution. If you allow this opportunity to slip by—and I most respectfully address my countrymen who are here to-day—you will not get another opportunity for another fifty years. But you may take it from me that this is an occasion when we should bury the hatchet. We should avoid and do all in our power to forget our past disputes, and our past grievances and animosities. Remember that this is a time for all to combine and come to some settlement, leading India on to the highway of progress and prosperity.

If, however, for any unfortunate reason we are not able to come to a settlement, I appeal to the British Government not to allow this question of the framing of a new constitution to be postponed. I hope that the British National Government or the British Parliament will come in, if necessary, as an arbitrator, and that whatever is just and right for both parties, whatever in justice ought to be done for them, your National Government will recommend, so that we may have a solution which, in the existing conflict of opinion, will be appropriate and advantageous.

These important problems can be approached only in that spirit. It is in that way and along that line of examination that we can make a real advance in framing a constitution for India. It is for these reasons that I feel certain our differences will be forgotten, and that we shall come to a settlement in all matters which will be worthy of our cause and which will lead India on the road to progress and advancement.

(The Committee adjourned at 3-30 p.m.)

PROCEEDINGS OF THE TWENTY-SECOND MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON TUESDAY, THE 15TH SEPTEMBER, 1931, AT 11 A.M.

Preliminary—concld.

Mr. Gandhi : Lord Chancellor, Your Highnesses and friends, I must confess at the outset that I am not a little embarrassed in having to state before you the position of the Indian National Congress. I would like to say that I have come to London to attend this Committee, as also the Round Table Conference when the proper time comes, absolutely in the spirit of co-operation, and to strive to my utmost to find points of agreement. I would like also to give this assurance to His Majesty's Government that at no stage is it, or will it be, my desire to embarrass authority; and I would like to give the same assurance to my colleagues here, that however much we may differ about our view-points I shall not obstruct them in any shape or form. My position, therefore, here depends entirely upon your good will, as also the good will of His Majesty's Government. If at any time I found that I could not be of any useful service to the Conference I would not hesitate to withdraw myself from it. I can also say to those who are responsible for the management of this Committee and the Conference that they have only to give a sign and I should have no hesitation in withdrawing.

I am obliged to make these remarks because I know that there are fundamental differences of opinion between the Government and the Congress, and it is possible that there are vital differences between my colleagues and myself. There is also a limitation under which I shall be working: I am but a poor humble agent acting on behalf of the Indian National Congress. And it might

be as well to remind ourselves of what the Congress stands for and what it is. You will then extend your sympathy to me, because I know that the burden that rests upon my shoulders is really very great. The Congress is, if I am not mistaken, the oldest political organisation we have in India. It has had nearly 50 years of life, during which period it has, without any interruption, held its annual session. It is what it means—national. It represents no particular community, no particular class, no particular interest. It claims to represent all Indian interests and all classes. It is a matter of the greatest pleasure to me to state that it was first conceived in an English brain: Allan Octavius Hume we knew as the father of the Congress. It was nursed by two great Parsees, Pheroze Shah Mehta and Dadabhai Naoroji, whom all India delighted to recognise as its Grand Old Man. From the very commencement the Congress had Mussulmans, Christians, Anglo-Indians—I might say all the religions, sects, creeds—represented upon it more or less fully. The late Badruddin Trebji identified himself with the Congress. We have had Mussulmans as Presidents of the Congress, and Parsees undoubtedly. I can recall at least one Indian Christian at the present moment, W. C. Bonnerji. Kalicharan Bannerji, than whom I have not had the privilege of knowing a purer Indian, was also thoroughly identified with the Congress. I miss, as I have no doubt all of you miss, the presence in our midst of Mr. K. T. Paul. Although—I do not know, but so far as I know—he never officially belonged to the Congress, he was a nationalist to the full. As you know, the late Maulana Muhammad Ali, whose presence also we miss to-day, was a President of the Congress, and at present we have four Mussulmans as members of the Working Committee, which consists of 15 members. We have had women as our presidents: Dr. Annie Besant was the first, and Mrs. Sarojini Naidu followed; we have her as a member of the Working Committee also. And so, if we have no distinctions of class or creed, we have no distinctions of sex either.

The Congress has, from its very commencement, taken up the cause of the so-called " Untouchables ". There was a time when the Congress had at every annual session as its adjunct the Social Conference, to which the late Ranade dedicated his energies, among his many other activities. Headed by him you will find, in the programme of the Social Conference, reform in connection with the " Untouchables " taking a prominent place. But, in 1920, the Congress took a large step and brought in the question of the removal of untouchability as a plank on the political platform, making it an important item of the political programme. Just as the Congress considered Hindu-Muslim unity—thereby meaning unity amongst all the classes—to be indispensable for the attainment of Swaraj, so also did the Congress consider the removal of the curse of untouchability as an indispensable condition for the attainment of full freedom. The position the Congress took up in 1920 remains the same to-day; and so you will see the Congress

has attempted from its very beginning to be what it described itself to be, namely, national in every sense of the term.

If Your Highnesses will permit me to say so, in the very early stages the Congress took up your cause also. Let me remind this Committee that it was the Grand Old Man of India who sponsored the cause of Kashmir and Mysore; and these two great Houses, I venture in all humility to submit, owe not a little to the efforts of Dadabhai Naoroji and the Congress. Even up to now the Congress has endeavoured to serve the Princes of India by refraining from any interference in their domestic and internal affairs.

I hope, therefore, that this brief introduction that I thought fit to give will serve to enable the Committee, and those who are at all interested in the claims of the Congress, to understand that it has endeavoured to deserve the claim that it has made. It has failed, I know, often to live up to the claim; but I venture to submit that, if you were to examine the history of the Congress, you would find that it has more often succeeded, and progressively succeeded than failed. Above all, the Congress represents, in its essence, the dumb, semi-starved millions scattered over the length and breadth of the land in its 700,000 villages, no matter whether they come from what is called British India or what is called Indian India. Every interest which, in the opinion of the Congress, is worthy of protection, has to subserve the interests of these dumb millions; and so you do find now and again apparently a clash between several interests. But, if there is a genuine real clash, I have no hesitation in saying on behalf of the Congress that the Congress will sacrifice every interest for the sake of the interests of these dumb millons. It is, therefore, essentially a peasant organisation, and it is becoming so progressively. You will —even the Indian members of the Committee—perhaps be astonished to find that to-day the Congress, through its organisation, the All-India Spinners' Association, is finding work for nearly 50,000 women in nearly 2,000 villages, and these women are possibly 50 per cent. Mussulman women. Thousands of them belong to the so-called "Untouchable" class. We have thus, in this constructive manner, penetrated these villages, and the effort is being made to cover every one of the 700,000 villages. It is a superhuman task; but if human effort can do so, you will presently find the Congress covering all of these villages and bringing to them the message of the spinning wheel.

That being the representatve character of the Congress, you will not be astonished when I read to you the Congress mandate. I hope that it may not jar upon you. You may consider that the Congress is making a claim which is wholly untenable. Such as it is, I am here to put forth that claim on behalf of the Congress in the gentlest manner possible, but also in the firmest manner possible. I have come here to prosecute that claim with all the faith and energy that I can command. If you can convince me to the contrary and show that the claim is inimical to the interests of these dumb millions, I shall revise my opinion. I am open to

conviction, but even so I should have to ask my principles to consent to that revision before I could usefully act as the agent of the Congress.

At this stage I propose to read to you this mandate so that you can understand clearly the limitations imposed upon me. This was a resolution passed at the Karachi Congress:—

> "This Congress, having considered the provisional settlement between the Working Committee and the Government of India, endorses it, and desires to make it clear that the Congress goal of Purna Swaraj, meaning complete independence, remains intact. In the event of a way remaining otherwise open to the Congress to be represented at any Conference with the representatives of the British Government, the Congress Delegation will work for this goal; and in partcular, so as to give the nation control over the Army, external affairs, finance, fiscal and economic policy, and to have scrutiny by an impartial tribunal of the financial transactions of the British Government in India, and to examine and assess the obligations to be undertaken by India or England and the right to either party to end the partnership at will: provided, however, that the Congress Delegation will be free to accept such adjustments as may be demonstrably necessary in the interests of India."

Then follows the appointment.

I have in the light of this mandate endeavoured, as carefully as I was capable, to study the provisional conclusions arrived at by the several sub-Committees appointed by the Round Table Conference. I have also carefully studied the Prime Minister's statement giving the considered policy of His Majesty's Government. I speak as subject to correction; but, so far as I have been able to understand this document, it falls far short of what is aimed at and claimed by the Congress. True, I have the liberty to accept such adjustments as may be demonstrably necessary in the interests of India, but they have all to be consistent with the fundamentals stated in this mandate.

I remind myself at this stage of the terms of what is to me a sacred settlement—the settlement arrived at at Delhi between the Government of India and the Congress. In that settlement the Congress has accepted the principle of federation, the principle that there should be responsibility at the Centre, and has accepted also the principle that there should be safeguards in so far as they may be necessary in the interests of India.

There was one phrase used yesterday, I forget by which Delegate, but it struck me very forcibly. He said, "We do not want a mere political constitution." I do not know that he gave that expression the same meaning that it immediately bore to me; but I immediately said to myself, this phrase has given me a good expression. It is true the Congress will not be—and, personally speaking, I myself would never be—satisfied with a mere political

constitution, which to read would seem to give India all it can possibly politically desire, but in reality would give her nothing. If we are intent upon complete independence it is not from any sense of arrogance; it is not because we want to parade before the universe that we have now severed all connection with the British people. Nothing of the kind. On the contrary, you find in this mandate itself that the Congress contemplates a partnership—the Congress contemplates a connecion with the British people—but that connection to be such as can exist between two absolute equals. Time was when I prided myself on being, and being called, a British subject. I have ceased for many years to call myself a British subject; I would far rather be called a rebel than a subject. But I have aspired—I still aspire—to be a citizen, not to the Empire, but in a Commonwealth; in a partnership if possible—if God wills it an indissoluble partnership—but not a partnership superimposed upon one nation by another. Hence you find here that the Congress claims that either party should have the right to sever the connection, to dissolve te partnership. It has got to be necessarily, therefore, of mutual benefit.

May I say—it may be irrelevant to the consideration, but not irrelevant to me—that, as I have said elesewhere, I can quite understand the responsible British statesmen to-day being wholly engrossed in domestic affairs, in trying to make two ends meet. We could not expect them to do anything less; and I wondered, even as I was sailing towards London whether we in the Committee at the present moment would not be a drag upon the British Ministers—whether we would not be interlopers. And yet I said to myself: It is possible that we might not be interlopers; it is possible that the British Ministers themselves might consider the proceedings of the Round Table Conference to be of primary importance even in terms of their domestic affairs.

India, yes, can be held by the sword! I do not for one moment doubt the ability of Britain to hold India under subjection through the sword. But what will conduce to the prosperity of Great Britain the economic freedom of Great Britain—in enslaved but a rebellious India, or an India an esteemed partner with Britain to share her sorrows, to take part side by side with Britain in her misfortunes? Yes! if need be, but at her own will, to fight side by side with Britain—not for the exploitation of a single race or a single human being on earth, but it may be conceivably for the good of the whole world! If I want freedom for my country, believe me, if I can possibly help it, I do not want that freedom in order that I, belonging to a nation which counts one-fifth of the human race, may exploit any other race upon earth or any single individual. If I want that freedom for my country, I would not be deserving of that freedom if I did not cherish and treasure the equal right of every other race, weak or strong, to the same freedom.

And so I said to myself whilst I was nearing the shores of your beautiful island: Perchance it might be possible for me to con-

vince the British Ministers that India as a valuable partner, not held by force but by the silken cord of love—an India of that character might conceivably be of real assistance to you in balancing your Budget, not for one occasion but for many years. What cannot two nations do—one a handful, but brave, with a record for bravery perhaps unequalled, a nation noted for having fought slavery, a nation that has at least claimed times without number to protect the weak—and another a very ancient nation, counted in millions, with a glorious and ancient past, representing at the present moment two great cultures, the Islamic and Hindu cultures; if you will, also containing not a small but a very large number of Christian population; and certainly absorbing the whole of the splendid Zoroastrian stock, in numbers almost beneath contempt but in philanthropy and enterprise almost unequalled and certainly unsurpassed. We have got all these cultures concentrated in India. And supposing that God fires both Hindus and Mussalmans represented here with a proper spirit, so that they close ranks and come to an honourable understanding—take that nation and this nation together, and I again ask myself and ask you whether, with an India free, completely independent as Great Britain is, whether an honourable partnership between these two cannot be mutually beneficial, even in terms of the domestic affairs of this great nation. And so, in that dreamy hope, I have approached the British Isles, and I shall still cherish that dream.

And when I have said this perhaps I have said all; and you will be able to do the i's and to cross the t's, not expecting me to fill in all the details, and tell you what I mean by control over the Army, what I mean by control over external affairs, finance, fiscal and economic policy, or even the financial transactions which a friend yesterday considered to be sacrosanct. I do not take that view. If there is a stock-taking between incoming and outgoing partners, their transactions are subject to audit and adjustment; and the Congress will not be guilty of any dishonourable conduct or crime, in saying that the nation should understand what it is to take over and what it should not take over. This audit, this scrutiny, is asked for not merely in the interests of India; it is asked for in the interests of both. I am positive that the British people do not want to saddle upon India a single burden which it should not legitimately bear; and I am here to declare, on behalf of the Congress, that the Congress will never think of repudiating a single claim or a burden that it should justly discharge. If we are to live as an honourable nation worthy of commanding credit from the whole world, we will pay every farthing of legitimate debt with our blood.

I do not think that I should take you any further through the clauses of this mandate and analyse for you the meaning of these clauses as Congressmen give them. If it is God's will that I should continue to take part in these deliberations, as the deliberations proceed I shall be able to explain the implications of these clauses. As the deliberations proceed I would have my say in

connection with the safeguards also. But I think I have said quite enough in having, with some elaboration and with your generous indulgence, Lord Chancellor, taken the time of this Meeting. I had not intended really to take that time, but I felt that I could not possibly do justice to the cause that I have come to expound to you, the Committee, and to the British nation of which we, the Indian Delegates, are at present the guests, if I did not give you out of the whole of my heart my cherished wish even at this time. I would love to go away from the shores of the British Isles with the conviction that there was to be an honourable and equal partnership between Great Britain and India. I cannot do anything more than say that it will be my fervent prayer, during all the days that I live in your midst, that this consummation may be reached.

I thank you, Lord Chancellor, for the courtesy that you have extended to me in not stopping me, although I have taken close upon forty-five minutes. I was not entitled to all that indulgence, and I thank you once more.

Pandit M. M. Malaviya: My Lord Chancellor, I endorse all that Mahatma Gandhi has said, and I think this one sentence should suffice to express all that I wish to say at this moment; but, just to emphasise the importance of the view which he has presented, I might add a little more.

It was one of the most extraordinary things that ever happened when the inhabitants of this island established their domination over India. It was a most extraordinary thing that, by a combination of adverse circumstances, India, a great continent by itself, the inhabitants of which had ruled themselves for thousands of years in their own country, came under the domination of the people of a small island six thousand miles away. It was the more extraordinary that this took place, because the people of this island have always stood for liberty. They have fought for the liberty of many peoples in different parts of the world; and that they should establish, and so long maintain, a domination over a great continent like India has, I submit, been an extraordinary event.

What has happened during all these years is known and has been recapitulated by Mahatma Gandhi. For forty-five years at least the Indian National Congress has been urging that India should have the right to govern itself. The Congress was established in 1885, and since then it has been asking that the representatives of the people should have charge of the administration of their affairs. It took a long time for the British Government to agree to introduce representative institutions in India. We had two reforms during the time of Lord Landsdowne and Lord Morley, up to the year 1909. Then came the war, and the contributions which India made in men and money drew the appreciation of many English statesmen, and we then hoped that India would be placed on a footing of equality with the other self-governing Dominions of the British Empire. We were disappointed.

During the war, the services of India were most generously recognised. I need not remind the Committee of the many appreciative utterances made by English statesmen—by the late Lord Asquith, by Mr. Lloyd George and many other leading Englishmen who expressed their appreciation of the work done by India. As I have already said, we hoped at that time that India would be allowed to exercise the power of administering her own affairs. Indeed, some of the utterances to which I have referred led us to hope that that would be so. Mr. Lloyd George, for example, said:—

> "The contribution of India has been splendid. The assistance they have given us in the most trying hours of this campaign has been incalculable in its value."

Lord Curzon stated that the Indian Expeditionary Force reached France in the nick of time, and that it helped to save the cause both of the Allies and of civilisation; and he added:—

> "The nature and value of their service can never be forgotten."

Mr. Lloyd George, speaking on another occasion, said:—

> "These young nations, the Dominions, fought bravely and contributed greatly and won their place at the council table. What is true of them is equally true of the great Empire of India, which helped us materially to win those brilliant victories which were the beginning of the disintegration of our foes. India's necessities must not be forgotten when the Peace Conference is reached. We have had four years of great brotherhood; let it not end there."

One would imagine that, after such utterances, India would be placed on a footing of equality with the self-governing Dominions of the British Empire. India was indeed made an original Member of the League of Nations, but that was a sort of comedy—that, not having freedom to govern itself, India should be called on to take part in the discussion and decision of affairs affecting the freedom of other countries, was somewhat incongruous. But this is by the way. The people of India felt very disappointed when the reforms of 1919 were introduced.

Your Lordship is aware that, simultaneously with the introduction of reforms, agitation was carried on very insistently for further changes to be introduced. From 1920 to 1930 we had ten years of very strong agitation. The Congress again and again asked for the introduction of full responsible government. The Government again and again put the matter off.

The convening of this Conference, after this long period of agitation, has raised in my mind the hope that the British Government are now prepared to establish full self-government in India. Apart from the utterances which we have read with great interest and gratitude, the fact of this Conference having been convened, and the fact, that the Congress has been asked to send

its representative, lead me to hope that the English people have made up their minds now to admit us as equal partners in the British Empire. I wish to emphasise this fact for the reason that the situation demands that there shall be no more misunderstanding about the matter. As I have said, the Congress has for forty-five years asked for full self-government. It is not likely that you can satisfy the people of India with any measure which will fall short of that. The country deserves to have that much recognition of its capacity to govern itself and to administer its own affairs. I hope therefore that all those who are taking part in this Conference as representatives of the British Government and people will look at the problems which confront us from that larger point of view. It is not a question of introducing some reform here and some reform there, of extending responsibility in one matter and a little power in another matter. The time when the people could be satisfied with such small changes has long gone by.

Nobody who has not been in India during the last twelve months—nobody who has not seen the agitation that has been carried on, the huge meetings that have been held, attended by 100,000 people, or 50,000 people, or 30,000 people, the part that the women and the children have taken in the agitation—nobody who has not seen all this can form an idea of the new India of to-day, burning with a desire for freedom. And it is my earnest wish and prayer that all those who have it in their power to bring about a real change in the constitution should take a full recognition of this fact. This demands that the questions which have to be considered should be looked at from a large point of view.

I am very thankful to find that the question has been taken up in the spirit in which it has been taken up. I wish to make it clear that the demand of national India for the establishment of full self-government was independent of the part which the Ruling Princes took in this matter. We are very grateful to Their Highnesses for the far-sighted statesmanship with which they have acclaimed the idea of a federation. We welcome that idea; but it should be remembered that the demand of national India for the establishment of full Dominion Status was independent of the part which Their Highnesses and the Indian States have taken, and which I hope they will take in this matter. Even if Their Highnesses had not seen fit to join us in the discussion of a new constitution for India, and to take part in the promotion and the building up of a federation, even then the time demanded that full responsible government should be established in India. But now that they have come forward with great foresight and patriotism to do their share in the building up of the new constitution, the path has been made clearer, and I hope that the questions that will now be considered by the Committee and the Conference will be considered from the point of view that full Dominion Status has to be established. If that fact is recognised, then the discussion of the other questions will become easier. The reservations and the safeguards will then come in for consideration in their proper order and time;

but so long as there is not a conviction that the time demands or that the situation in India demands that full responsible government should be established there without further delay, so long, I think, will the questions that are coming up for discussion not be seen in their proper perspective. If it is once agreed that Dominion Status is a necessity and must be established, then I submit that the question for the Conference to consider would be, what are the difficulties in the way of the establishment of such status. And we should be prepared to discuss every one of the difficulties that may be urged, and prepared to do all that is reasonably possible for us, to remove misgivings and to allay apprehensions which might be entertained by friends of India as to the future of India under the new constitution.

If the new Government of India is to get a fair chance, I think all impartial friends will agree that it should receive full power to administer the affairs which will be entrusted to it. We are face to face to-day in India with two aspects of the situation. First there is the political situation, which demands that the natural and reasonable aspiration of Indians that they should be masters in their own country should be recognised; and I think it is unnecessary for me to appeal to my English friends, to my British friends, to look at this aspect of the question in a large way. They have been the apostles of liberty, they have fought for the liberty of many peoples in many parts of the world. Is it too much for us to expect that, after they have been connected with India for 175 years, and have derived immeasurable benefits from it, and view of the part which Indians played with them in the Great War, and also in recognition of the ancient civilisations which India has inherited, both Hindu and Mussulman—is it too much to ask that they should even now make up their minds to treat us Indians as their equal fellow-subjects, and recognise our right to administer our own affairs as they have the right to administer their own? I very much hope that they will make up their minds to do so; and once they do so, the difficulties that they find, the apprehensions, the fears which they entertain, will, I submit, easily give way.

In that attitude, if they will remember the position which India occupies to-day from the economic point of view, they will be greatly helped in arriving at a decision. We have complained in India, for the last fifty years and more, that the administration of India has been extremely costly, far too costly for the people of the country. Fifty years have passed—in fact a much longer period has passed—since India's Grand Old Man, Dadabhai Naoroji, began to urge upon the English Government a large reduction of expenditure, both Military and Civil. The Despatches of the Government of India themselves are full of protests regarding the charges for Army expenditure which have been inflicted from time to time upon India. India's statesmen have spoken again and again—and none more strongly and more repeatedly than my esteemed friend Sir Dinsha Edulji Watcha—against the excessive character of the Army expenditure; but that expenditure has been maintained in

spite of our protests. The Civil expenditure has also been maintained at a high figure. Not only that, but it has been enhanced by the Lee Commission grants during the last few years. India has now come to a crisis when it is not possible for the Government of India to carry on their administration with the existing scale of salaries. You must have read in to-day's "Times" the report of the speech made by His Excellency the Viceroy in India. The Government of India are busy trying to retrench expenditure; but I submit, My Lord Chancellor, that the Government of India do not possess the power and cannot have the outlook which are needed in order that a retrenchment of expenditure, such as the situation calls for, should be undertaken.

Unfortunately, you yourselves are passing through a great national crisis. We all sympathise with you in your troubles. We earnestly hope and pray that you may soon get over them, and we admire the spirit in which you have met the situation. We admire the spirit in which the National Government has been formed, and in which the most outstanding personalities in each Party have come forward to put their shoulders to the wheel and to pilot the ship of State through the troubled waters in which it has found itself. It is such a National Government alone which can think of and carry out a large policy of revision of expenditure. It is not possible for the Government of India as it is constituted to-day to do that work, and in order that that work should be done rightly, in order that the relief which is due to the Indian people should be secured to them, in order that the reductions should be large and should enable the Government of India to carry on its administration without facing bankruptcy from day to day, it is necessary that the representatives of the people of India should be allowed to exercise the power to administer their own financial affairs.

This combination of the economic and political aspects of the case makes it imperative that the constitution which we are thinking of preparing should be one in which the representatives of the people, chosen by the people and trusted by the people, should have the charge of the administration of the financial affairs of the country. Once this view is adopted, the question of reservations and safeguards will require to be considered over again. Among the reservations, I notice, first stands the Army expenditure. Now, there was a time, not many years ago, when many Indians were prepared that the administration of the Army should be in charge of the Viceroy for some time to come. To-day the position is different. To-day the feeling is general and widespread that, if India is to have a fair chance to prosper, the Army expenditure must be cut down ruthlessly. That expenditure is sitting like a upas tree upon the Indian vegetation. It prevents India from doing many things which are necessary to build up the national strength of the people. I do not wish to go much into detail at this moment; but I wish to remind the Committee that, in that expenditure, the cost of the British troops forms an important and heavy item. Now, British troops have existed in India for a long time, but we

have protested during all that time that those troops were not needed. We have got an Indian Army consisting of 150,000 of the best soldiers, officered by British officers. I am not speaking of that Army; we wish to leave that Army as it stands, so far as numbers are concerned, but with such improvements and changes as may be necessary. But so far as the British troops in India are concerned, that is an Army against which protests have long been made, that it was really a part of the British reserves kept in India for which India was unjustly made to pay. I ask all my British friends to look at this question in a dispassionate light. There is no desire to get rid of the British Officers of the Indian Army immediately. As I have said, so far as the Indian Army is concerned, they will continue to work, and I hope we shall work together for a long time. But so far as the British troops are concerned, that is a matter that requires consideration, for it affects expenditure to a very large extent. You have the question of disarmament before you, and I hope, along with that question, you will consider whether, in fairness to India, the British troops should not be recalled—whether they should not be recalled at once or whether they should not be recalled in the course of a limited period which may be agreed upon. That, I submit, is a matter which requires consideration from the point of view which is now presented to us by the altered state of things both in India and in England.

As regards the financial safeguards, they, too, require fresh consideration from the point of view which I have mentioned. The change in India has been tremendous. The capacity of the people to bear further taxation is known to be now nil. They cannot continue to live under the existing conditions; and if there is to be any relief to them, a large reduction in expenditure will be necessary, both on the Military and on the Civil side. The question has been raised of controlling financial policy from the point of view of helping India to retain its credit. We shall all be very grateful to our British friends for any advice they will give us so that we may retain our credit and enhance it. Let me remind them, however, that we Indians understand our duty to our country, and we recognise that credit is important in the carrying on of any administration; and we shall not do anything which will impair that credit. On the contrary, we shall do everything that is reasonable in the interests of India to strengthen that credit. So also with regard to fiscal policy. What is needed is that we should not be asked to agree to certain proposals in the abstract, but that we should examine each matter on its own merit; and, where it is found to be in the interests of India that certain safeguards should be provided, we should all be very willing very thankfully to receive the advice which may be given to us and to discuss the matter. We shall either convince you or be convinced by you. In either case I hope there will be an understanding between us which will be a great asset in the situation.

There are other questions upon which I should like to touch, but I find the time is passing and I will therefore shorten what I

have to say. If we look at the problem from the correct point of view, the willingness of the Indian States to come into the proposed Federation I most sincerely welcome. I give my hearty support to the idea that there should be one united India—united, though divided in certain respects. I only wish to say that, if we accept that idea, the details which must be discussed need not frighten us. I do not think we are called upon at this stage to endorse all the details which have been proposed. They will require very much further examination, but they are details. If it is once decided that there shall be a Federation in which the Indian States and British India will unite, the rest of it, I submit, will not be difficult to settle. The great thing is to recognise that this agreement on behalf of Their Highnesses the Ruling Princes of India to come into an all-India Federation has put the problem, in a new light and a very welcome light, because it was impossible to think of the new Government of India not having the closest relations with the Rulers of about one-third of India. Therefore the coming in of Their Highnesses is a matter upon which we may well congratulate ourselves and congratulate Their Highnesses and the country as a whole.

Among the questions which will require consideration will be those of the composition of the Houses and the measure and method of the representation of the States; but those are all matters of detail. So also are the questions of the rights which should be exercised by the smaller States and by the greater States. But I do not see anything, My Lord Chancellor, which should stand in the way of the Federation being agreed upon. With the help of yourself and the British statesmen whom we find around us, and with the help of Their Highnesses the Ruling Princes, we should be able to hammer out a constitution for a federated India which should stand solid and satisfactory for all time.

So far as the question of the minorities is concerned, I submit that that also should not stand in the way of our building up a constitution. The question of minorities is a very important question. No man who wishes to have a working constitution would ignore the necessity of satisfying the minorities. I am sure we should be able to arrive at a settlement among ourselves. This is my hope still; but, if we are not able to do so, that is a question for which some other solution can be found. It is inconceivable to my mind that the future constitution of a great country like India should be blocked by a small question like that of satisfying minorities. I call it a small question, not because I undervalue its importance, but because I believe that it is a question which can be settled, which is not incapable of solution; and I hope that, when our discussions have proceeded further we shall find some solution which will enable us to go forward with the building up of the constitution.

Forty-five years have passed since I first attended the Indian National Congress. In supporting the resolution which was there proposed for the establishment of national self-government, I con-

cluded with the following words; and I regret to find that, even after the lapse of half a century I have still to conclude with the same words to-day: We have asked our British fellow subjects to help us to establish full responsible self-government in India. I hope the cause of liberty and right will now engage the attention of every honest Englishman in India and in England, and that every true Briton who values the rights, the privileges, the freedom, which have made him and his country what they are, will aid us, like a true Briton, to the fruition of our aspiration for equal rights, equal privileges and equal freedom.

H.H. The Chief of Sangli: My Lord Chancellor, I tender my grateful thanks to Your Lordship for the cordial welcome you have been pleased to extend to me along with our other colleagues who appear here for the first time as members of this Committee. I am much beholden to His Majesty's Government for the honour they have done me in inviting me to serve on this Committee. I esteem it as indeed a privilege that I should be permitted to participate in a discussion in which so many distinguished countrymen of mine are making their valued contributions.

I am especially glad of the opportunity afforded me, because I am here, not merely in a personal capacity, but as the representative of the States in general and of the smaller States in particular, which, though their individual resources may be small in comparison with those of the Provinces of British India and the larger States, are yet considerable in their aggregate extent—which, moreover, have a proud historical tradition behind them, cemented by Treaties and agreements with the Paramount Power; and which, from the very limitations of their size, have a form of administration more in touch with the daily life and interests of their subjects than is possible in the large States and Provinces.

The representatives of the States in general agreed last year in principle to enter federation with British India subject to certain safeguards, because they realised that in that way alone could the ideal of a united India be achieved. In that resolution I concurred, and to it I firmly adhere. And we have reason to be glad that the principle of federation has been so largely accepted by the Princes. It is, however, essential that the rights of the States should be adequately safeguarded. Their Rulers desire to lay stress upon this, as a condition precedent to federation, not only on account of their position and traditions, but also because the condition and degree of progress in the States vary very greatly. They are, therefore, glad that their British Indian friends appreciate the sacred character of the Treaties which they have concluded with the British Government. It must follow that any modification of the sovereignty of the Rulers can be made only with their consent.

I fully recognise that the union of the States and British Indian Provinces involves problems which can only be solved by mutual good will and concession. I would be inclined to refer only to three problems at this stage: first, the extent of the representation

of the States in the proposed Federal Chambers; second, the method by which the Members constituting that representation should be appointed; and third, the division of subjects between the Federal Government and the individual Governments of the States and Provinces.

As regards the first problem, I would earnestly urge that some allowance in excess of a mere representation on the basis of population should be granted to the States in both the Federal Chambers. It is surely desirable that in a federation as many as possible of the federating Units should be individually represented. This principle was recognised in the great federations of the United States of America and of the German Empire. I do not, of course, claim that every Indian State, however small, can be individually represented; but it is certainly desirable that as many States as possible should be thus represented. Moreover, if we look at the question from another point of view, the federation is being formed from two great collections of units, the British Provinces and the States. It is, therefore, reasonable to ask that the representation in the Upper Chamber should be equally divided between the Provinces and the States. As regards the Lower House, I admit that the numbers must be based more largely upon population. But may I say that here also some advantage should be allowed to the States, for two reasons: firstly, that it is not desirable to put in a hopeless minority the States which, from their geographical position, do not include many populous cities; and, secondly, that the States are so scattered in a territorial sense that it is impossible for them to be conveniently represented on a population basis if the unit of population be not placed lower than would be necessary in the more compact and thickly populated British Indian Provinces.

As regards the second question—as to how the representatives of the States should be appointed—the States desire that this should be left for the decision of the Administrations of the States concerned. Personally I am entirely in favour of its being on as liberal a basis as possible; but any pressure on the States to adopt any particular form of selecting their representatives would in effect be an invasion of their sovereignty.

As regards the division of the subjects between the Federal Government and the Governments of the States and Provinces, the position of the States is very clear: they do not wish to interfere in the affairs of the Provinces and they do not wish the Provinces to interfere in their affairs. It follows that the subjects dealt with by the Federal Government should be as few as possible and should be strictly confined to the truly Federal sphere. The British Provinces aspire to form true autonomous units. This position of true autonomy the States already enjoy and must be allowed to retain. It may be necessary to have Central subjects for the British Provinces, but there is neither necessity nor justification for extending these subjects to the States.

My Lord, I recognise that these problems require full discussion and consideration. They also require that the Delegates from

British India should appreciate the peculiar rights, as well as the difficulties, of the States.

If goodwill is forthcoming on both sides, as I am sure it will, I feel no doubt that it will be possible, My Lord, under your distinguished Chairmanship, to realise the ideal that we all have at heart: a Federated India, which will derive strength from the fact that it unites, in a flexible yet firm union, Provinces and States of widely different individual character.

Sir Samuel Hoare: Lord Chancellor, I should like to say to my colleagues, first of all, that whenever I make an intervention in our discussions, you must not necessarily take it as a considered declaration on behalf of His Majesty's Government. I regard myself here as being in two capacities: first of all, as Secretary of State; and, secondly, as an individual member of this Committee. In the course of our discussions no doubt I shall express many provisional opinions, and I shall ask many questions that may not, when we come to see the whole picture, necessarily indicate the final and considered view of the Government as a whole.

The next observation I should like to make is to say how very glad I am to have heard the speeches of the new members of the Committee. It is all to the good that our Committee should be more fully representative of public opinion as a whole. It is also to the good, if I may say so, that every members of the Committee should freely express his own opinions, whether they differ or not from the opinions of his colleagues. I think, therefore, if I may say so, that it is truly satisfactory that we have had from the new members such a very frank expression of their opinions. Obviously the speeches to which we have listened have contained a number of very controversial issues. The new members themselves have not always agreed upon many important issues. Yet I do think it is all to the good that, at the very outset of our discussions, we should have had these differences of opinion clearly put before us. I take in particular the two principal speeches to which we have just listened this morning, Mr. Gandhi's speech and Pandit Malaviya's speech. They would not expect me to agree with a great many of their contentions; and if it were the stage of our deliberations in which we were going to involve ourselves in general arguments, I should attempt to make an answer to many of the statements they have made, and to put, in a very frank way, our counter point of view to the point of view that they have expressed.

But I suggest to you, Lord Chancellor, that this is not the occasion in our deliberations in which we should enter into a general controversy of this kind. I think it is much better to set aside the general principles that have formed so large a part of those two speeches, and to remember that we are a Committee with definite terms of reference, namely, to see whether we can work out the details of an all-India Federation within the British Empire—for those, after all, are our terms of reference. With that in mind we can proceed to the detailed discussion of the actual factors in the problem.

Gentlemen, I have ventured to make these observations lest it should be thought that my silence implied in any way an acceptance of many of the very controversial propositions which have already been raised.

Lord Reading: I only wish to make one or two observations at this stage, following upon the remarks of the Secretary of State. First, however, may I be allowed to say with what deep interest I have listened to the speeches that were made by Mr. Gandhi and by Pandit Malaviya this morning. I do not intend for one moment to dwell upon the various points which they have raised: they will all come up for further detailed consideration as we proceed. It is, however, worthy of observation, I think, that they have introduced subjects, particularly in their more extended range of vision, which must be regarded by some of us as controversial; and that they have readily understood. It is an advantage that we have had the opportunity of listening to their views and of hearing what they have to say; and we trust that, when the discussion further proceeds in detail, they will—as I am sure they will—listen to our observations in just the same way as we have to theirs, and that we shall continue to speak not only with the utmost courtesy—that is certain here—but also with complete frankness.

I occupy now a somewhat different position from that which I held when the earlier sessions of the Conference took place, and I agree with what has fallen from the Secretary of State for India. I am now a member of the Government, but at the same time I am also a member of the Liberal Delegation, which was appointed to meet the other members of this Committee; and it may be difficult at times quite to realise in what particular position one is speaking. All I desire to say is that I endorse what the Secretary of State has said. Questions may be asked and arguments may be advanced, but it must not be assumed from that that we may not take up a different attitude should we be members of the Government which has to consider in the end the particular proposals which have to be made to Parliament. I do think it is important that in this assembly we should retain our individual independence, and more particularly that we should retain our independence as members of British Delegations, notwithstanding that we are for the present members of one National Government.

Head 2.

Questions connected with the Election of Members of the Federal Legislature.

The following points for discussion in connection with this Head were drafted by the Chairman:—

(i) *What is to be the method of selection for each Chamber of the Federal Legislature of the representatives—*

(*a*) *of individual States,*

(*b*) *of groups of States?*

(ii) *If the method of selection is to be nomination, by what method is a State's representative's seat to be vacated otherwise than by death or on dissolution?*

(iii) *Are the British Indian representatives in the Upper Chamber (other than those, if any, representing special interests), to be—*

(*a*) *directly elected by territorial constituencies,*

(*b*) *indirectly elected by the Lower Chamber,*

(*c*) *indirectly elected by the Provincial Legislatures?*

(iv) *Are the British Indian representatives in the Lower Chamber (other than those, if any, representing special interests), to be—*

(*a*) *directly elected by territorial constituencies,*

(*b*) *indirectly elected by the Provincial Legislatures,*

(*c*) *indirectly elected by any other method?*

(v) *Is provision to be made for the representation by special constituencies of special interests, other than communal interests, and if so, for which interests—*

(*a*) *in the Upper Chamber,*

(*b*) *in the Lower Chamber?*

(vi) *Are any special qualifications to be laid down for eligibility for membership of the Upper House?*

(vii) *What requirements, if any, are to be made in the matter of an Oath of Allegiance on assumption of a seat in either Chamber?*

(viii) *What provision, if any, shall be made in each Chamber for nominated members, and for what purposes?*

Chairman: I think the position now is that our preliminary discussion has come to an end, and we must now get down to details. Perhaps you will take in your hands the paper which has been circulated and turn to page 3 of it. In accordance with your wish, as expressed yesterday, we are going to begin with Head No. 2. I propose first of all—it will not take me more than a very few minutes—to draw your attention to those paragraphs in the Reports of the Federal Structure sub-Committee which deal to some extent with the questions to which you will now have to give a definite answer.

If you will take Head 2, you will see that the first question is:—

> " What is to be the method of selection for each Chamber of the Federal Legislature of the representatives—(*a*) of individual States, (*b*) of groups of States? "

Now will you please take the Report of the Federal Structure sub-Committee in your hands, because I shall have to refer you to one or two points and ask you to make notes for the discussion. If you

will turn to page 8 of the Report of the Federal Structure sub-Committee, you will see that paragraph 6 bears on it to some extent. Paragraph 6 says:—

> "The method whereby the representatives of British India are to be chosen was not referred to this sub-Committee, but Their Highnesses made it clear that, in their opinion, the method by which the States' representatives should be chosen will be a matter for the States themselves."

Now will you please turn to page 15 of the Report of the Federal Structure sub-Committee. You will see that the question by this time was referred to us. Please look at the bottom of the page, where you will see it says:—

> "The further Heads which were referred to the sub-Committee and are now under discussion are:— . . . . . (5) The method whereby representatives from British India and from the Indian States are to be chosen."

Will you please put against this item, therefore, the reference to the pages in the Report of the Federal Structure sub-Committee—page 8 and page 15. I will now ask you to turn to paragraph 26 on page 21 of the Report of the Federal Structure sub-Committee. The Federal Structure sub-Committee did not go very deeply into this question. If you will look at paragraph 26, the last sentence of the first sub-paragraph, you will see that it says:—

> "It was thought that this object might be secured by prescribing for the candidature of the British Indian members qualifications similar to those now in force for the Council of State: and the sub-Committee have no doubt that the Rulers of the Indian States, in selecting their representatives, will ensure that they are persons of similar standing."

Here comes the method of election to the Upper Chamber, and the Report says:—

> "The sub-Committee are almost unanimously of opinion that the British Indian members of the Senate should be elected by the Provincial Legislature, by the single transferable vote."

If you will now go to question (ii) of Head 2, you will see that it is this:—

> "If the method of selection "—(that is, selection by the States)—" is to be nomination, by what method is a State's representative's seat to be vacated otherwise than by death or on dissolution?"

That is a question which was not touched upon by the Federal Structure sub-Committee, and you will have to consider it.

Please turn now to the next page, where you will find question (iii). We are now coming to the British Indian representatives in the Upper Chamber, and the question is:—

> "Are the British Indian representatives in the Upper Chamber (other than those, if any, representing special in-

terests) to be—(*a*) directly elected by territorial constituencies, (*b*) indirectly elected by the Lower Chamber, (*c*) indirectly elected by the Provincial Legislatures? "

Will you place opposite to that, please, page 21 of the Federal Structure sub-Committee's Report, because I have just pointed out to you that the recommendation was that:—

"The sub-Committee are almost unanimously of opinion that the British Indian members of the Senate should be elected by the Provincial Legislatures, by the single transferable vote."

Will you now please turn to (iv):—

"Are the British Indian representatives in the Lower Chamber (other than those, if any, representing special interests), to be—(*a*) directly elected by territorial constituencies, (*b*) indirectly elected by the Provincial Legislatures, (*c*) indirectly elected by any other method? "

That is dealt with in paragraph 32 of the Federal Structure sub-Committee's Report on page 23. I am not going to read the whole of it; but I should be glad if you would put a note against question (iv)—that it is dealt with on page 23 in paragraph 32.

With regard to the next one, (v):—

"Is provision to be made for the representation by special constituencies of special interests, other than communal interests and, if so, for which interests—

(*a*) in the Upper Chamber,

(*b*) in the Lower Chamber? "

I shall be glad if you will put against that paragraph 34. If you will just turn to it, it is on page 24; and that paragraph is headed "Representation of special interests and of the Crown in Federal Legislature."

The next question is:—

"Are any special qualifications to be laid down for eligibility for membership of the Upper House? "

That is to some extent dealt with in paragraph 26 of the Federal Structure sub-Committee's Report, and I must just read it. It is on page 21:—

"But proceeding simply on the basis that there will be two Chambers, the Upper smaller in size than the Lower, and without any decision as to the relations of one to the other, the balance of opinion was to the effect that the Upper Chamber—which might be described as the Senate—of the Federal Legislature should be a small body, of from 100 to 150 members, whose qualifications should be such as will ensure that it is a body of weight, experience and character."

If you would allow me, I would just like to give you a note about that, before I go on, with regard to the qualifications. I am

not saying that these are the proper qualifications; I am only just saying that they are some of the qualifications which obtain in other constitutions:—

> "The qualifications of a Senator should be as follows"—(I am not saying these are right, you know; I am only putting out suggestions)—"that he is to be not less than 25 years of age, except in the case of a Prince sitting in his own right; (2) that he is to be a British subject or a Ruler or subject of an Indian State; and (3) either to be in possession of specified property qualifications or to have been a member of either Chamber of the Indian Legislature as constituted by the Government of India Act, 1919, or of the Federal Legislature, or to possess such other qualifications as any Provincial or State Government may prescribe with a view to securing persons who have rendered distinguished public service."

Now, there is one question which I left out there, but which we shall perhaps have to consider at some time or other. It is all very well to talk about qualifications, but are there to be some disqualifications at times? Now, that is a matter which I do not propose to discuss at the moment. I have here a long note with regard to disqualifications which I can circulate later. The difficult point there—I am going to tell you all the difficulties at once, so that we may consider them—is disqualifications which it may or may not be thought wise to impose with regard to political offences. I am not giong to say more than that. I simply mention the fact to you.

Now, with regard to (vii):—

> "What requirements, if any, are to be made in the matter of an Oath of Allegiance on assumption of a seat in either Chamber?"

With regard to that, the Federal Structure sub-Committee did not make any recommendation; but it is usual to provide that members of a Legislative body should subscribe to an Oath or Affirmation of Allegiance. A provision of this character may raise difficulties in the case of an Indian Federation, particularly as regards the States. I have got a note about that which I will circulate in due course. I am not going to take up your time now. We have been very carefully into that matter; and later on, if you will allow me, I will put before you the various pros and cons.

Finally, (viii):—

> "What provision, if any, shall be made in each Chamber for nominated members, and for what purposes?"

That is dealt with in paragraph 34, if you will just put a note against it. It is on page 24 of the Federal Structure sub-Committee's Report:—"Representation of special interests and of the Crown in Federal Legislature."

Sir Tej Bahadur Sapru: My Lord, Chancellor, I am speaking with considerable diffidence, as I know that I am following the two

foremost leaders of present-day India. Mr. Gandhi has, in his speech this morning, put the Congress point of view in a manner in which no other living Indian could have done. He, if I may be permitted to say so, sums up in his unique personality the most burning passion for freedom in India and the highest form of patriotism. Pandit Malaviya's record of public service and dedication to the public affairs of his country extends over forty years. It may be that it is my misfortune that I have at the present moment not the honour to belong to the National Congress. Nevertheless, I am free to confess that, during my experience as a public man in India, I have never known any other two men who have commended the same confidence or respect of their countrymen as these two distinguished representatives on my right. Whether you agree or whether you do not agree with them, you have got to listen to them, to think over what they have said; and speaking for myself, My Lord, I venture to think that the note which Mr. Gandhi struck this morning is, notwithstanding the fact that it has introduced several controversial matters, one full of hope. I do not despair that, before this Conference is over, Mr. Gandhi, who can lead public movements as no one else has led them in other times, will have established his reputation all over the world, not merely as a great leader of public movements, but as a great constructive statesman. If I may be permitted to remind you all of what a famous statesman in philosophy said one: "It is only pygmies who destroy; it is giants who can build." I have not the least doubt that, notwithstanding anything that may be disturbing to the minds of certain members of this Conference or of this Committee in Mr. Gandhi's speech, you will find—it is my expectation and at any rate it is my hope—that Mr. Gandhi has got a great deal to contribute in the way of constructive statesmanship so far as this Conference is concerned.

My Lord, the critics of the last Session of the Round Table Conference in England and in India have not been few. The question has been broadly asked, both in your country and in my own country, whether the last Session of the Conference was at all a success. We have been told by some of our countrymen and by some of your countrymen—including among them men with long experience of administration in India, men who have occupied the position of Governor—that the last Session of the Conference was a failure, that it arrived at no definite conclusion; and they have ventured to prophesy that this Conference is also going to be a failure. Let me say with all respect that I do not share that view at all. If I were to point out one single element regarding the success of the last Conference, I would say no greater tribute to the work which we carried on last year and early this year could be paid than that those who withheld their co-operation last year should have this morning offered their co-operation in such a generous manner. Let those critics remember this always.

I have never for a moment thought that the task of constitution building, however pleasant it may be to theorists, is really an easy

one when you apply yourself to it in a practical fashion. No one need remind us of the difficulties that lie ahead. No one need tell us that we have in India a country where you have many religions and many traditions. We recognise that; we have always recognised that; but I feel sure that everyone of us here has come with a full determination that we shall not do anything which may widen those differences. On the contrary, we shall do everything that lies in our power—Hindu, Muslim, Sikh and Parsi—to bridge over those differences. I an encouraged in that hope by the presence of Mr. Gandhi; for whatever differences may divide you from him, or whatever differences may divide some of us from him, on one point I feel absolutely sure about Mr. Gandhi. The Mahatma is, has been, and I have no doubt will continue to be, absolutely non-communal in his outlook. With him, I feel sure, the freedom of India does not mean the freedom of the Hindus. It means the freedom of everyone who is in India, whatever be his nationality, whatever be his religion, and whatever be his creed. I have always maintained that one of the greatest duties which we are called upon to discharge at this Conference, if not the greatest, is so to arrange things that we may be able to say to the world that we have settled our domestic differences—that whatever differences may have divided us in the past, in the future they will not divide us. That will be the measure of our success; and, if we fail to arrive at such a conclusion in our work, I think failure will be written large on our foreheads. That is the view that I take. I feel confident that Mr. Gandhi will apply himself to this great task, and I have no doubt that he will have in an abundant manner the co-operation of my Muhammadan friends in the solution of this difficult task. Whatever be the constitution one thing is absolutely certain and we need not be reminded of it: that the position of the minorities, that the position of the Depressed Classes, the position of certain interests in India, in which I include the European trading community, have got to be protected. On that point I am absolutely clear. How they will be protected, and to what extent they will be protected, is a question which will come up at a later stage. I do not wish to raise any controversial issue on that point beyond saying that we have got to apply ourselves to that task, and the sooner we do apply ourselves to that task the better for the country.

There is only one other observation which I will permit myself to make, with your Lordship's indulgence, and it is this. In certain quarters it has been said that the constitution which we outlined at the last Session of the Conference was a mere camouflage; that it did not give any responsibility; that it was merely a cover or a cloak to hide autocratic powers. I absolutely deny that. We did not arrive at definite conclusions on the last occasion. That was not our object—that was not the method which we pursued. Our conclusions last year were of a tentative character. It was left open to everyone, Indian or English, to go back upon the conclusions in the light of the completed work. Therefore,

let no one say that the conclusions embodied in this Report, however defective they may be, are absolutely final. I for one think that there is considerable room for improvement; but I do say that we succeeded in concentrating public attention on this point. And the more there is an expression of opinion on the various aspects of this point, the better it will be for the Conference as a whole.

In the few remarks that I am going to make on Head No. 2, I should not be understood to commit myself irrevocably to any of them. I am also proceeding in a tentative fashion, and my object to-day will be rather to provoke attention on this point and to elicit information. I reserve to myself—as everyone else has reserved to himself—the liberty of revising my own opinion, enlarging my own views on certain questions, and narrowing my views on other questions. I am only throwing out a few suggestions in the hope that they will be discussed on their merits and not treated as to be embodied in my final opinion.

(*The Committee adjourned at 1-0 p.m. and resumed at 2-30 p.m.*)

Sir Tej Bahadur Sapru: My Lord, before I come to a discussion of the various propositions under Head 2, I will crave Your Lordship's indulgence just for a moment to make one or two further preliminary observations.

I would venture to say that the idea of an all-India Federation which we worked out, without going into the minutest details, at the last Sessions, appears to me to have come to stay; there is no alternative to it of a serious character which has been put forward by anybody in India or in this country. Mahatma Gandhi referred to a clause in the Delhi Settlement; and it would appear to everybody who studies that clause carefully that, so far as the basic idea of an all-India Federation is concerned, there is no dispute over it. What the content of that idea will be is a matter for discussion and a matter for settlement. I cannot forget, however, that in certain high quarters an attempt has been made to discount this idea of an all-India Federation and to put forward the idea of a confederation of Indian States first. I do not propose to go into that question at this particular moment at any length; I am only making a passing reference to it.

There are only two submissions that I would like to make with regard to that idea of confederation. The idea of confederation is not, it appears to me, necessarily inconsistent with the idea of an all-India Federation that we put forward last year; but if the authors of that idea do think that by putting it forward they can prevent certain legal and constitutional consequences from following, then, with all respect, I venture to say they are gravely mistaken. Even if you have a confederation of British India in one block and of Indian States acting in another block, and you combine the two together and call the two a federation, those legal consequences are inevitable. I venture to submit that there is a tremendous amount of confusion in discussing this thing on the question of sovereignty, divided allegiance, nationality and things

of that kind. I shall deal with them as the occasion arises; but meanwhile I will venture to submit with all respect that, if there is any seriousness about it, I do hope that the idea of confederation will not be put forward as a block in our way. I personally think that if there are people, whether they belong to British India or to the Indian States, who do not like the idea of an all-India Federation or who are opposed to it, it is far better that they should frankly and courageously say. "We are opposed to the all-India Federation and we do not want it," rather than put forward that idea as a block in our way. That is the only caveat that I should enter at this particular moment.

Now, My Lord, with your permission, I shall take up the various items under Head No. 2. I regret that we departed from the order which was originally accepted by Your Lordship in the paper that you were pleased to circulate, and I feel it somewhat difficult to deal with Head No. 2 without dealing with Head No. 1; but I shall observe Your Lordship's ruling, and as far as possible will avoid going into matters which come under Head No. 1.

It is, however, impossible for me to deal effectively with the content of Head No. 2 without, in a general way, giving some sort of idea as to the composition of the Senates in various countries. I have prepared a statement, which I shall venture to read, just to show what the strength of the Senates in various countries is. Most of my statement will be based upon standard text-books or books of reference which are easily available. I find that the Italian Senate consists of under 400 persons, and the method of recruitment is entirely by nomination. The Japanese House of Peers consists of 399 members, and the Spanish Upper House, as it existed until a few months ago, consisted of about 360. The French Senate consists of 314, the Swedish of 150 and the American of 96; and the American and Swedish Senates are wholly elected. The Canadian Senate consists of 96, wholly nominated. The Danish Upper House has 76 members, the German Reichsrat has 68, the Netherlands 50, Switzerland 44, the Australian Upper House 36 and the South African 40. I will not refer to the others.

I wish also to mention one important point, namely, as to how the members of these Houses are appointed, either entirely by election, partly by nomination and partly by election, or wholly by nomination. Under the first heading, namely, the Houses which are entirely elected, come the United States, Australia, Switzerland, Denmark, the Netherlands, Sweden, Norway, the South American Republics, and Belgium, save for the presence of the Princes Royal. Under the second heading—Houses partly nominated and partly elected—you have South Africa, the Irish Free State and Spain, which was partly hereditary also. Under the third heading—Houses wholly nominated—you have Canada, Italy, New South Wales, Newfoundland and New Zealand.

There is only one other observation which I will venture to make at this stage, and it is this. Except, perhaps, in Japan and Italy,

most of the Second Chambers are about half the size of the Lower Chamber; and, indeed, in some States you find that the Second Chamber is very much smaller. I am only drawing the attention of the Committee to these facts, which can be gathered from any standard book.

Now, under the first heading here we assume—and I must proceed on that assumption—that we are going to have a bicameral Legislature, and we must also bear in mind the most solid fact that the Second Chamber will consist of representatives not only from the Provinces of British India but also from the Indian States. In judging the whole situation, we must not forget that, so far as the Indian States element is concerned, there is no parallel to it to be found in any other constitution in the world. That is the most outstanding feature of the all-India Federation which we are going to establish.

If you are going to have representatives from British India in the Upper Chamber, and also representatives of the Indian States in the Upper Chamber, then the question arises, as it is given under Head 2:—

> "What is to be the method of selection for each Chamber of the Federal Legislature of the representatives—(*a*) of individual States, (*b*) of groups of States?"

There is also the second question:—

> "If the method of selection is to be nomination, by what method is a State's representative's seat to be vacated otherwise than by death or on dissolution?"

I should have preferred, on the question of the representation of the Indian States in the Upper Chamber, Their Highnesses to take the lead and tell us what their view of the matter is. I am working under a disadvantage in that respect; but I venture to think that, so far as the representation of the Indian States in the Upper House is concerned, the method of selection will not present any real and serious difficulty. Your Lordship will remember that, at the last Session of this Conference, I ventured to suggest that the method of selection to be adopted for the Upper House should be indirect—in other words, that the Provincial Legislatures in British India, so far as British India is concerned, should be the constituencies for the election of their representatives in the Upper House. I believe I am right in saying that the vast majority of the members of this Committee and of the Conference supported the idea of indirect election through the Provincial Legislatures. That was also the recommendation contained in the Report of the Nehru Committee.

I am quite aware that there are certain Upper Chambers in other parts of the world where the House is entirely elected; but I venture to point out that, where the Upper Chamber is an elected House, there has generally been an attempt on its part to usurp powers over financial matters; and you cannot in fairness deny to the Upper House a very substantial voice in matters of a financial character

when that House also is an elected House. If, on the other hand, it is desired that the Upper House, in the peculiar circumstances of India, should have more or less a conservative character, and consist of men who by reason of their age, experience and judgment can exercise a steadying influence, then I venture to think the proper course for us is to have that House appointed by nomination or by election through the Provincial Legislatures. This, of course, refers to British India. Whether you will have only the Provincial Legislatures, or whether you will enlarge the constituencies for the Upper House by adding to them local boards such as municipal boards or district boards in British India, is a different question; and on that I can quite understand there being a difference of opinion. I offer no suggestion with regard to that; but, on the main question of indirect election, I stand by the recommendation contained in the Report of the Federal Structure sub-Committee.

Coming now to the Indian States, it is quite clear that, if we are prepared to favour indirect election so far as British India is concerned, we cannot expect the Indian States to adopt any other method. The Upper House in a federal constitution, if I am not mistaken, is supposed to represent the states or the governments of the states more than the people. If that is so, then I do not think we can seriously object at all to the Indian States choosing their representatives or the representatives of their governments in an indirect manner by nomination—that is to say, there will be no popular election. That is the suggestion I make with regard to the Upper House.

But when you come to the Lower House, difficulties of an enormous character do arise. So far as British India is concerned you will find, from the Report of the Federal Structure Committee, that the vast majority of the Indian members present on the last occasion favoured direct election; and I venture to think that, so far as British India is concerned, there is a very strong feeling that the election should be of a direct character. I would, in this connection, remind the House of the recommendations of the Government of India contained in their Despatch. They themselves point out that, to adopt an indirect method of election for the Lower House, would be looked upon in India as a reactionary step; and they say that possibly for the period of transition it might do to have something in the nature of a mixture of directly and indirectly elected representatives. I venture to suggest that, so far as the Lower House is concerned, British India should be allowed to elect its representatives in a direct manner.

But when you have done that, then you come up against a difficulty of a very serious character, and that relates to the Indian States. I am fully aware of the sentiment of Their Highnesses on this point, and I would beg of them not to misunderstand me and not to suppose that I am using any dictatorial language. There is nothing further from my intention than to indulge in language of that character. I thoroughly realise the peculiar position of the Indian States, and I do not want in the slightest degree to interfere

with their liberty of action or with their discretion in this matter. But I would respectfully remind them that the march of democracy is irresistible. They can regulate it in their own time, they can control it in their own time, but I venture to think that they cannot resist it; and it is for Their Highnesses to consider whether they will not adopt some method of sending their representatives to the Lower House which may enable their representatives to bear more or less the same character as the representatives of British India will do. It will distinctly be a disadvantage to the representatives of the Indian States in the Lower House, in dealing with their colleagues of British India, if they are always to be reminded that they are not popular representatives, but that they are the representatives of individual Princes or of Governments of Indian States. The real point which I am emphasising is that the Lower House should contain representatives from the Indian States of a popular character—that the representatives of the Indian States in the Lower House should not be officials. How they will do it is a question for them to decide. There are Indian States at the present moment in India which possess legislative bodies. There are the great States of Mysore, Travancore, Cochin, Bikaner and Baroda, which do possess legislative assemblies. There are other States which do not possess legislative assemblies, but which do possess bodies like municipalities or district boards. There is again a third class of States which do not possess either legislature or municipal bodies or local bodies. I do not think that it is the intention of any one of us here to force our decisions upon Their Highnesses; but we beg of them, in the interests of the all-India Federation, of which they are as much the authors as we—and, indeed, of which they are in a larger measure the authors than we are, because, without their consent, the idea would not have borne any fruit—we appeal to them to consider whether, in the interests of the country as a whole, and of the all-India Federation, in which lie our hopes of Indian unity, they will not adopt methods to satisfy popular opinion in British India. It is for them to decide, and it is for them to make a statement on the point. Therefore, my submission is that the States which are already equipped with legislative machinery should decide to send their representatives through their legislative bodies; for the States which can afford to send their representatives through municipalities and district boards, to send their representatives through them. As regards the rest, we can afford to bide our time; and we hope that the example of these bigger States, which contain legislative bodies and municipal bodies, will be infectious in course of time.

You will observe that, in question No. (i), we have to deal with the cases of individual States and of groups of States. I imagine that this classification of the States implies that there are certain individual States which would like, or would probably insist upon, individual representation, more or less following the practice of the Chamber of Princes, with which Their Highnesses are more familiar

than I can pretend to be. On the other hand, there are smaller States which can only find representation by grouping themselves together in certain groups, because it is quite obvious that, if you give representation to each one of these units, your Second Chamber will consist of something like 600 odd people, and your First Chamber must consist of even a larger number of men—and that is entirely out of the question. Therefore it is for Their Highnesses to say what is the minimum number that will meet their requirements and which will meet their needs. Then we can discuss the question of the proportions between British India and the Indian States. It is for Their Highnesses to say how, having got that minimum number, they are going to provide for the representation of the smaller States and how they are going to group them together. These are matters of a domestic character so far as Their Highnesses are concerned. We are not directly interested in the question as to how the representation is to be secured for the smaller States; but we do wish to say that we entirely sympathise with and support the claim of the smaller States that they should be represented not only in the Upper House but in the Lower House.

Now I pass to the second question under head No. 2. The question is, you will observe:—

> "If the method of selection is to be nomination, by what method is a State's representative's seat to be vacated otherwise than by death or on dissolution?"

I will not take many minutes over this question; but I would venture to say that, once a State's representative has been selected or elected or nominated to either of the two Houses, excepting in the case of officials of the States who may be sent up to the Upper House, their seats should not be vacated otherwise than by death or by dissolution—that is to say, I think constitutionally it would not be right or correct that A should be representing an Indian State in the Lower House to-day and B should be representing the same State to-morrow. There must be continuity, which alone can secure independence on the part of the representatives. But I am prepared to make an exception in the case of officials who may be sent by the Indian States to the Upper House. For instance, I could quite imagine a State sending a Minister to the Upper House to-day, and that Minister ceasing to hold office after six months, and that State desiring to send his successor to the Upper House. But, excepting for that, I would not allow the seat of a representative of an Indian State in either House to be terminated or to be taken back merely at the option of a nominating or selecting agency.

Chairman: I ought to have put this in: you would allow him to resign?

Sir Tej Bahadur Sapru: Yes; he is at liberty to resign.

That is all I would like to say with regard to the second question.

I come now to the third question, and the third question, as formulated by the Lord Chancellor, is this:—

> "Are the British Indian representatives in the Upper Chamber (other than those, if any, representing special

interests), to be—(*a*) directly elected by territorial constituencies, (*b*) indirectly elected by the Lower Chamber, (*c*) indirectly elected by the Provincial Legislatures?"

I have partly anticipated my answer to this question; and I will simply venture to say that, so far as I am concerned, I stand by the recommendations contained in the original Report, namely, that the representatives in the Upper Chamber should be indirectly elected by the Provincial Legislatures. I will not support clauses (*a*) and (*b*) of that question. I will not say anything more on that point.

I pass on to the fourth question:—

"Are the British Indian representatives in the Lower Chamber (other than those, if any, representing special interests), to be—(*a*) directly elected by territorial constituencies, (*b*) indirectly elected by the Provincial Legislatures, (*c*) indirectly elected by any other method?"

I am fully aware of the objection that was taken at the last Session of this Conference, by certain members of the British Delegations, to direct election of the representatives of British India in the Lower House. But, in the first place, we must not judge of the future by what has happened during the last ten or twelve years in British India; and, in the second place, I think that, on that point, Indian opinion is so very clear and so very strong that we have no justification for ignoring that opinion. It is true that the country is a very big one; it is true that there are difficulties of transport in various Provinces; and it is true that sometimes you find—perhaps very often you find—that there is not that direct touch between the representative of a constituency and the electors in the constituency. I have known, however, instances of various members of the Legislature in my Province, and in certain other Provinces, seeking to cultivate direct personal contact with their electors. This habit is bound to grow and must grow; and as our electorates become more and more educated they will insist that their representatives in the Lower House must keep more and more in touch with them. Probably our constituencies will have to be recast; probably when the franchise is enlarged we shall have constituencies of more manageable size and spread over compact areas. For instance, at the present time one of the constituencies in British India is composed of 46,000 people and another used to be—I do not know whether it is now—something like 96,000. There are enormous difficulties of transport; and constituencies of those big sizes are, and will continue to be for many, many years to come, absolutely unmanageable.

Chairman: Could you help us with regard to expense. Supposing a man is a poor man and wants to put up, is it very expensive to have these very large constituencies?

Sir Tej Bahadur Sapru: Very expensive—and you will have to prescribe certain rules for election expenses. I have known cases both in my public capacity and in my professional capacity where

certain families have been ruined over elections. I have known a case where a certain individual has spent something like Rs. 60,000 over an election. That may seem a very small figure to you here, but it is a very big figure in India.

Chairman: I can assure you that it is a very big figure to us here nowadays.

Sir Tej Bahadur Sapru: I have had to appear in these election cases, and I do think your rules require very, very careful reconsideration. While undoubtedly we want constituencies and popular election and all that sort of thing, I do not wish this democratic constitution simply to crush the people out of existence. That is the feeling I have in view.

I regret very much that, for certain reasons, good, bad, or indifferent, the Government of India have not found it possible to go on with the Franchise Committee. I should very much have liked to have had a concrete scheme of franchise sent by the Government of India because that would have enabled us to proceed on much more solid ground. At the present time, in discussing the method of election, we have more or less to proceed on certain essentials which may turn out to be true or false. Of course all these remarks I am making must be treated as being subject to a satisfactory solution of the question of franchise.

I come now to question No. (v):—

> " Is provision to be made for the representation by special constituencies of special interests, other than communal interests, and if so, for which interests—(*a*) in the Upper Chamber, (*b*) in the Lower Chamber? "

With regard to this question what I will say is this. I look forward to a time, and a not very distant time, when the sense of unification will have so much developed that it will be wholly unnecessary to make provision for any special interests. But you must deal with the reality of the situation as it is at the present time; and I venture to think that, if you were to do away with the representation of certain special interests at the present moment, there would be dissatisfaction among those interests. And I suggest that, quite apart from communal interests, we must make provision for the representation of both commerce and industry, both European and Indian; we must make provision for the representation of Europeans in India; we must make special provision for the representation of the Depressed Classes. I have a very strong feeling with regard to that; and you may take it from me that, whatever be calculated to promote and foster the interests of the Depressed Classes and to safeguard their interests—that will have my unstinted support. And I do certainly suggest that, so far at any rate as these interests are concerned, they require to be protected, and you will have to make special provision for them. What exactly will be the amount of representation which they will claim, or which will be granted to them, is a matter for discussion with them; and I reserve my opinion until my European friends on the one side and my friend,

Dr. Ambedkar, who represents the Depressed Classes, on the other hand—though I do not wish to treat the Europeans and the Depressed Classes on the same footing—have spoken. Whether they should be represented in both the Houses or whether they should be represented in the Lower Chamber is, again, a very difficult question. Personally, if they claim representation in both Houses, I will not object to it; but I can understand opinions being different on that point in certain quarters. I can quite understand some of my friends saying that, in certain constitutions, provision has been made for certain special interests only in the Lower House and not in the Upper House. But that is a matter on which I reserve my opinion until it is raised and argued out by any other member of this Committee.

I now come to the next question:

> "Are any special qualifications to be laid down for eligibility for membership of the Upper House?"

Your Lordship was pleased this morning to refer in part, I believe, to the question of qualifications; and, if I may be permitted to do so, I will venture only to remind the Committee of the provisions in other constitutions on this point. In most of the constitutions, so far as membership of the Upper House is concerned, there is an age limit prescribed.

Chairman: When you are old enough or when you are young enough? When you are old enough I suppose.

Sir Tej Bahadur Sapru: Yes, old enough. For instance in Canada, under Section 22, you must be of the age of 30 to be eligible for membership of the Upper House, and you must possess movable property of a certain value. In Australia, under Section 8, the provision is identical with regard to the House of Representatives as well as the Upper House, unless it is otherwise provided: the age is 21. In South Africa the age prescribed is 30. In the United States of America the age is 30. In France the age prescribed is 40. In Czechoslovakia the age prescribed is 45. Now, it is for us to decide what will be the proper age for membership of the Upper House in India. I personally would suggest anything between 30 and 35. And I would also suggest, following some of the models —particularly the Belgian model, which to my mind is very exhaustive on this question—that we must make room, we must provide for the representation of experience in the Upper House. For instance, as time goes on the number of men who will acquire administrative experience in the country will grow. Already you have got numbers of men who have held the highest judicial and executive appointments in the country. Well, I see no reason why the country should be deprived of that experience; I see no reason why they should not place their experience at the disposal of the country. Similarly, there may be men who have rendered signal service to the country in any department of life—in any department of learning or science—and they can make very solid contributions to the discussion of the various problems connected with the deve-

lopment of the country which are bound to arise from time to time. I am suggesting that the scheme of representation should be fairly exhaustive so as to enable people of that class to find themselves in the Upper House, if they choose to stand for certain constituencies, or if the country is anxious to secure their services.

Chairman: Is there any alternative of a property qualification, or do you think not? You did not mention that. I only mean as an alternative, not as a necessary thing. You have put an age limit and you have put experience. I was only wondering whether, supposing a man were of the right age, but had not this sort of experience, supposing he were a man of very considerable property, would that be a qualification?

Sir Tej Bahadur Sapru: I would not necessarily make it so.

Chairman: Very well, thank you.

Sir Tej Bahadur Sapru: My Lord, I am dealing with these questions very briefly. I hope that, at some stage or other, when discussion has taken place, perhaps I shall be allowed a further opportunity of expressing my opinion.

Chairman: Certainly. Would it be convenient for you then to say anything about disqualification?

Sir Tej Bahadur Sapru: So far as disqualification is concerned, what I would say is that even our present rules provide for disqualifying a person from membership either of the Lower House or of the Upper House. But I do not accept the soundness of those provisions in their entirety. I would not make conviction of a political offence necessarily a disqualification. Of course the usual disqualifications of bankruptcy and things of that kind must apply. If a person has passed through the bankruptcy court and has not been discharged—well, that is the rule in India.

Chairman: How does that affect the principle of property qualification?

Sir Tej Bahadur Sapru: That will not affect the question of property qualification. Under the insolvency law, when a man has become insolvent his property is vested in a receiver, and he cannot exercise his right under the constitution.

Now, My Lord, I come to the seventh question:

> "What requirements, if any, are to be made in the matter of an Oath of Allegiance, on the assumption of a seat in either Chamber?"

Sir Maneckjee Dadabhoy: Pardon me for interrupting for a moment. You have not told us how the special interests are to be represented—by election or by nomination.

Sir Tej Bahadur Sapru: By election by those bodies. For instance, the Chamber of Commerce may elect their representatives. I would have no nomination at all with regard to special interests; it would be by election.

I now come to the seventh question, which deals with the question of the Oath of Allegiance. Now, My Lord, I will only remind the Committee that there are provisions to that effect to be found in certain constitutions.

I have been asked whether I would favour the representation of the Universities. Well, I have a very great affection for Universities in India, but I feel that it would be over-weighting the representation of the educated classes, because I venture to think that for many years to come you will find representatives of the educated classes going in larger and larger numbers to other constituencies, and I would not make a special constituency—though I would not necessarily oppose that.

Now I come to the question of the Oath. As an instance of a provision of that kind, I will remind the House of the provision with regard to the Oath of Allegiance that is to be found in the Irish constitution. It runs thus:

> "I"—so and so—" do solemnly swear true faith and allegiance to the Constitution of the Irish Free State as by law established, and that I will be faithful to His Majesty King George V, His heirs and successors by law, in virtue of the common citizenship of Ireland with Great Britain and her adherence to and membership of the group of Nations forming the British Commonwealth of Nations."

I am quite aware that the association of the Indian States makes the adoption of this form of Oath somewhat difficult, but I venture to think that the difficulty is by no means one which cannot be overcome. I should certainly have an Oath of Allegiance to the Constitution. And then you will have to provide something which will meet the point of view of the Indian States so far as allegiance is concerned—though, frankly speaking, I say that, by owing allegiance to His Majesty the King-Emperor, a subject of an Indian State does not, in my opinion, cease to owe allegiance to his immediate sovereign. I venture to speak with the greatest possible diffidence in the presence of the eminent legal authorities who are to be found here, but the old doctrine of undivided sovereignty is, to my mind, an exploded doctrine now. So far as the point of view of the Indian States is concerned in regard to that matter, I do not think anyone of us will object to meeting their legitimate point of view, so long as the Oath of Allegiance contains the element of an Oath of Fidelity to the Constitution itself. If their objection is, however, that their representatives should not be allowed to take an Oath of Allegiance to the King because that conflicts with their allegiance to Their Highnesses, I am ready to entertain any proposition which may be put forward by Their Highnesses. It is not for me to make a suggestion; it is for Their Highnesses to make a suggestion so as to preserve their sentiment in regard to that matter. We shall give the most respectful consideration to any suggestion they may make on that point.

I will not take up the time of the Committee any further on that matter; I will now deal with the question of—

"What provision, if any, shall be made in each Chamber for nominated members, and for what purposes?"

I speak subject to correction, but Your Lordship will be pleased to remember that many of us made it abundantly clear, on the last occasion, that what we would seriously object to is the presence of an official bloc in either House. Under the scheme followed by Your Lordship at the last Session, there are going to be certain subjects which will be styled Crown subjects. Subject to any expression of opinion by other members on that matter, I would suggest that it is really not for me but for certain other members of this Conference to suggest what exactly is the amount of representation that they want to have by nomination and how they propose to secure nomination. When they have spoken on that point I shall be in a position to express our opinion. Perhaps on this matter the true lead will be given to us by the Secretary of State who, notwithstanding the disadvantage that he still continues to be a member of his Party, after all represents the Government of India in its organised form. I will therefore venture to ask Sir Samuel Hoare to give us some lead in this matter and to tell us exactly what is the amount of representation which, in his opinion or in the opinion of the Government of India, is considered to be necessary for the protection of these Crown subjects. That will enable us to judge whether in truth we are going to have an official bloc or something less than an official bloc; and therefore I reserve my opinion on that point until we have heard from Sir Samuel Hoare or from any other official representative of the Government of India or of the India Office an expression of opinion on the matter.

Lord Peel: If I may interpose, may I ask Sir Tej how he defines an official bloc?

Sir Tej Bahadur Sapru: An official bloc is a bloc which votes according to the mandate which is given to it by the Government of the day.

Lord Peel: Irrespective of its numbers?

Sir Tej Bahadur Sapru: Yes, in a House of 145.
moment consists of about 25 or 26 persons, and we could not agree to a bloc of that size.

Lord Peel: That is just the point I am on. It now consists, as we know, of 26 persons—I think the figure is 26.

Sir Tej Bahadur Sapru: Yes, in a House of 145.

Lord Peel: Would you regard a smaller number, say 10, as an official bloc? Does the question of numbers come in ?

Sir Tej Bahadur Sapru: I would not call it an official bloc in that case. Assuming that we are to have Crown subjects, I would say that a reasonable number of men representing those Crown subjects might come in; but it would all depend on what the number

of the Crown subjects is and what the other provisions of the constitution are.

Chairman: On page 25 of the Report of the Federal Structure sub-Committee it is stated:—

> "Others think that the Governor-General should be empowered to nominate a specified number of persons, not exceeding, say, 10, to each Chamber."

Lord Peel: Your other test was whether they must vote as they are told. I understand that test would not apply if the number is as small as 10?

Sir Tej Bahadur Sapru: If the number is 10, in a House of 350, it does not matter to me from the practical point of view whether they vote as they are told or independently. It is of no consequence in that case; but it does matter if, in a House of 145, 26 men are told to vote in a certain way and have to carry out their instructions.

Chairman: Surely nobody is ever told really that he must vote in a certain way?

Mr. Iyengar: It is so in India.

Sir Tej Bahadur Sapru: I have been a member of Lord Reading's Government and have myself issued orders to that effect.

Lord Peel: Did you do it?

Sir Tej Bahadur Sapru: I did do it; and if I were at liberty to disclose things, Lord Peel, I would say that you made me do it on a very famous occasion. Lord Reading will bear me out that the whole of the Government of India was in the melting pot because of your orders.

Sir Maneckjee Dadabhoy: I should like to ask whether the remarks which Sir Tej has made apply both to the Lower House and to the Upper House.

Sir Tej Bahadur Sapru: To both. I make no distinction. That is all I have to say for the present.

Sir Muhammad Shafi: We at this corner of the table cordially welcome the presence of Mahatma Gandhi at this Conference, not only because his presence here to-day makes the Conference truly representative of all schools of political thought in India, but also in particular for two reasons. In the first place, he told us in his speech this morning that he has come to the Conference absolutely in a spirit of co-operation. I took down the very words used by Mahatma Gandhi. To my mind that declaration is a happy augury for the success of this Conference. In the next place, we welcome his presence in this Conference because we hope and believe that his presence will lead to that communal settlement, honourable to all parties concerned, which is absolutely essential not only for the success of this Conference but for the future of India.

Whatever observations I am going to make with regard to the various sub-heads on which our opinion has been asked must be

taken to be subject to one condition precedent. These opinions must be considered as subject to whatever decisions may be arrived at with regard to certain important communal questions in the Minorities sub-Committee, and, in particular, as subject to the claim of the Muslim community to have thirty-three and one-third per cent. representation in the Central Legislature of India as a whole.

With these few brief preliminary observations, I now wish to express my opinion—which I can fairly say is the opinion of all of us in this corner of the table—upon the various sub-heads noted by Your Lordship. The first is—

> "What is to be the method of selection for each Chamber of the Federal Legislature of the representatives—(*a*) of individual States, (*b*) of groups of States?"

I adhere to the opinion expressed by me and endorsed by other representatives of our group in the earlier stages of the Conference, namely, that this is a matter for the Indian States themselves. While the representatives of the Indian States in the Upper Chamber will in all probability—and, if I may say so, rightly—be the nominees of the Governments of those States, I agree with my friend Sir Tej Bahadur Sapru, in suggesting for the consideration of Their Highnesses that, in so far as the representation of the States in the Lower Chamber is concerned, they should devise some scheme of popular representation which will not only bring the character of the representation of the Indian States in the Lower Chamber more or less into line with that of British India in that House, but which will be calculated also to give satisfaction to their own subjects—that is to say, some method of indirect election, such as through the Legislative Councils of those States which even now possess their own legislatures or through the municipal or district boards in those States in which a system of local self-government actually exists. I have nothing further to say on this sub-head.

Coming now to the next sub-head:—

> "If the method of selection is to be nomination, by what method is a State's representative's seat to be vacated otherwise than by death or on dissolution?"

Diwan Bahadur Mudaliyar: Or by resignation.

Sir Muhammad Shafi: Just one moment, please. My learned friend, Sir Tej Bahadur Sapru, was inclined to hold that, except in the case of death or dissolution, there should be no other disqualification of any kind; and when it was pointed out to him by the Lord Chancellor—what about resignation—he admitted that resignation would very naturally be automatically a cause of his ceasing to be a member of the Legislature. But I would like to ask my friend to reconsider his position. What if a member of the Legislature representing any of the Indian States becomes a bankrupt? If he has gone through the Bankruptcy Court, to my mind a bankrupt ought to cease to be a member of any Legislature.

Sir Tej Bahadur Sapru: I put it under a different heading—under disqualification. I accept that.

Sir Muhammad Shafi: He ceases to be a member.

Sir Tej Bahadur Sapru: I accept that.

Sir Muhammad Shafi: Moreover, supposing a member from an Indian State is convicted of a serious offence, an offence seriously affecting his character, or an offence constituting a breach of law and order, would my learned friend still retain him in the Legislature in spite of that conviction? I venture to submit that, when a man has been convicted of a serious offence, whether he belongs to British India or whether he belongs to the Indian States, he is no longer worthy of holding the honourable and responsible position of a member of the Central Legislature, and should cease to be a member of such a body. These are the further suggestions which I have to make in this connection.

Coming now to the next sub-head:—

> "Are the British Indian representatives in the Upper Chamber, (other than those, if any, representing special interests), to be—
>
> (*a*) directly elected by territorial constituencies,
>
> (*b*) indirectly elected by the Lower Chamber,
>
> (*c*) indirectly elected by the Provincial Legislatures?"

I adhere to the opinion, which I expressed at an earlier stage, that election to the Upper Chamber should be indirect and should be through the Provincial Legislative Councils. As regards the Lower House, I am definitely of opinion that there election should be direct. My learned friend, Sir Tej Bahadur Sapru, was absolutely correct when he said that there was no difference of opinion among any schools of thought in British India with regard to the matter. I know of no political organisation in India, communal or otherwise, which has expressed any opinion to the contrary. We are entirely unanimous that the Lower House, as in all civilised countries, should be elected directly by the people. The argument which has been advanced, that the constituencies for the Central Legislature are so large as to make it advisable that election to the Central Legislature should be indirect, and not direct, does not appeal to me. The Central Legislature is going to be enlarged. So far as I can see, its size will be almost double the size of the present Legislature, and if no difficulty has been found in the existing circumstances I can foresee no difficulty whatever when the size of the constituencies in India shall have been halved, so to speak.

Chairman: Will you let me ask you there—would you endeavour, in making up your electoral body, to get an equal number of voters in each area?

Sir Muhammad Shafi: So far as I can see, even if adult suffrage were to be granted, the number of voters would not be more than half a million; but as there are no prospects of adult suffrage just at present, the number of voters actually would be much less, and

each member would, roughly speaking, represent a million of the population of India if the number of members in the Lower House were raised to 300. I see no difficulty at all in such an electoral system in actual working.

With regard to sub-head (v):—

> " Is provision to be made for the representation by special constituencies of special interests, other than communal interests, and if so, for which interests . . . . ? "

Turning to paragraph 34 of the earlier Report of this Committee, the interests specified there are: the Depressed Classes, who, as the Committee is aware, represent the second largest minority in India, next to the Muslim community; Indian Christians, who also are an important minority community; Europeans, whose political importance cannot be measured by their number and who have contributed towards the progress of India from every point of view—material, intellectual, from every point of view—to an extent to which history bears witness; Anglo-Indians; Landlords; Commerce (European and Indian); and Labour. I venture to think that all these special interests ought to be represented in the Central Legislature and ought to be represented in both Houses. That is our definite opinion in so far as my friends and myself are concerned. As regards the quantum of representation, that is a matter to be settled hereafter.

As regards point (vi):—

> " Are any special qualifications to be laid down for eligibility for membership of the Upper House? "

So far as the age qualification is concerned, there is amongst the rules at present one rule which requires all members of all Legislatures, I think, Provincial as well as Central, to be at least 25 years of age. I am inclined to the view that the age limit for the Upper House should be raised to 30. As regards the rest I would lay down the same qualifications as are at present to be found in the rules relating to the election of members of the Council of State in India, which, as Your Lordship is aware, include a property qualification also. It seems to me that to concede that the landowners of India are entitled to representation in the Central Legislature as representing special interests—and very powerful interests—and at the same time not to lay down property qualifications so far as the members representing that class are concerned, is incongruous to say the least, and has no argument in support of it. I think that ought to be included in the rules to be framed.

> " What requirements, if any, are to be made in the matter of an Oath of Allegiance on assumption of a seat in either Chamber? "

My learned friend read out to the Committee the terms of the Oath of Allegiance which is taken in the Irish Free State. It consists of two parts: allegiance to the Constitution and allegiance to the King. So far as allegiance to the Constitution is concerned, no difficulty can arise either with regard to representatives of British

India or with regard to the representatives of Indian India. They both equally owe allegiance to the Constitution. In so far as allegiance to the King Emperor is concerned, it seems to me that there is no real conflict in allegiance to their own Ruling Princes and in allegiance to the King; and, in consequence, in the Oath of Office their allegiance to the King is in no way antagonistic or in opposition to allegiance to the Ruling Princes. The allegiance to the King is in addition to the allegiance which they owe to their own Ruling Princes. I remember the case, when I was a member of the Government of India, of a nobleman, who at one time was himself a Ruling Prince, but had abdicated in favour of his son. He was subsequently nominated by Lord Reading as a member of the Council of State; and, to the best of my recollection, he took the Oath of Office which is at the present time administered to all members of the Central Legislature, including this profession of allegiance to the King-Emperor. There ought to be no difficulty, in my mind, in regard to this matter.

Then the last item is:—

"What provision, if any, shall be made in each Chamber for nominated members and for what purposes?"

There are two considerations which have to be borne in mind in connection with this question. In the first place, there will be what have been called Crown subjects during the transitional period; and it is obvious that some representative of the Viceroy and Governor-General will have to be nominated to represent those subjects. That nomination will have to be provided for. As to the quantum of that nomination I am not prepared to express any opinion at this stage. I have no doubt that that will be dealt with later when we shall have an opportunity of expressing definite opinions on it. Then there will be another class of nominated members who will have to be nominated in connection with particular pieces of legislation—*i.e.*, experts. Sometimes there will be before the Central Legislature pieces of legislation in which the assistance of experts will be not only useful but almost indispensable; and provision ought to be made in the rules enabling the Viceroy and Governor-General—of course on the advice of the Ministry—to be able to nominate experts whenever the need for such nominations may arise.

Chairman: Do you mean Parliamentary draughtsmen, and those kind of people? I want to follow what is in your mind.

Sir Muhammad Shafi: No; I was thinking of experts in connection with legislation. There will be subjects arising on industrial legislation, for instance.

Chairman: Yes, I see.

Sir Muhammad Shafi: And other legislation—only for that purpose.

Chairman: Is it your view that they should have the right to vote too? Do not trouble to answer now—if you will just keep that in mind.

Sir Muhammad Shafi: I am not prepared just at this moment to give an answer to that question.

That is all I have to say.

Sir Tej Bahadur Sapru: Would not they follow the precedents of certain constitutions and simply advise the House and go away?

H.H. The Maharaja of Bikaner: My Lord Chancellor, I have felt that, as we have the pleasure of having the Chancellor of the Chamber of Princes here, His Highness the Nawab of Bhopal should have opened these deliberations.

Chairman: May I say at once that I asked His Highness of Bhopal; and, as we say in the law, you are " devilling " the part for him.

H.H. The Maharaja of Bikaner: As, of course, the wishes of the Chancellor are tantamount to a command, I have no other alternative.

H.H. The Nawab of Bhopal: My Lord Chancellor, you will remember His Highness dealt with it last time; and I think it is only right that he should continue. You know that he speaks on my behalf as well as on his own behalf.

Chairman: I am very glad you have such an obedient follower.

H.H. The Maharaja of Bikaner: I do not propose, My lord Chancellor, to make a speech to-day generally on the important questions affecting the States. Doubtless an opportunity will occur later—perhaps on questions such as that of the relative representation and percentage of the States in the Federal Legislature; and similar opportunities will also occur, I have no doubt, when we take up questions such as that touched upon by my friend, Sir Tej Bahadur Sapru, with regard to questions of confederation, and so on.

But to-day, Sir, before I begin to represent what I believe will be the general view—and the provisional views, subject to the complete picture—of the Indian States Delegation (and any other Princes and Ministers having particular views of their own will of course be free to express them) may I just say a word or two? On the 7th September, it was my privilege, in the absence of the revered and esteemed Leader of our Delegation, His Highness the Maharaja Gaekwar of Baroda, and of His Highness the Chancellor, to express the very great pleasure and satisfaction which we derived from the presence of you, My Lord Chancellor, here, as Chairman of our Committee, to whom we all owe so much. I also generally desire to join in the words of welcome to the new members of our Committee, and particularly to Mahatma Gandhi, who represents the most important political party in India, which unfortunately was not represented last time; and similarly, to join in the words of welcome extended by some of my other colleagues to my old friend Pandit Madan Mohan Malaviya. I feel sure that in doing so I am voicing the general sentiments of the Indian States Delegation.

I would also just point out that, whilst I am personally speaking in general agreement with many of the details mentioned by Sir Tej Bahadur Sapru and Sir Muhammad Shafi, it has to be realised that it is not, by the very nature of things, in the power of any of us who are in the Indian States Delegation, to dictate policy to all Rulers and Governments of States in regard to certain matters which are covered by Head 2. In the circumstances, therefore, it will inevitably be a matter, largely at least, for the States concerned to decide.

Before I go further to particulars, may I also say one word which may have to be amplified later—that is, that there appears to be a general confusion in the minds of many here as regards what really are the States. We hear of 500 and 600 States. When I am talking of the States to-day I should be understood as referring to the States proper and not so much referring to what are in Aitcheson's Treaties—I am quoting from authoritative works of reference— referred to as the petty States, Talukdaris, Jagirs and so on; though it is the duty and the care and the desire of our Delegation to safeguard all the reasonable interests of all concerned.

I have already taken an opportunity, since arriving in England, to voice the sentiments which I have all along entertained in regard to the smaller States; and my past record of services in the Chamber of Princes and elsewhere has shown the sympathy which I have always evinced for them, and my desire, as well as my fights in the past, to safeguard all their legitimate interests.

With these observations, Sir, coming to question (i), I think there can be little doubt. I am glad to see that Sir Tej Bahadur Sapru and Sir Muhammad Shafi, who have spoken before me, recognise the case of the States; and I am particularly indebted to Sir Tej for supporting what I had said during our last Session—that we have here to devise a special constitution for the States, as —to quote the words used to-day by Sir Tej—there is no parallel to the States in the constitutions of the world.

As to question (i), Sir—the method of selection of States' representatives for the Federal Legislature—so far as the Upper House is concerned, there will have to be nomination by States as Governments.

As regards the Lower House, it is a difficult matter for any of us on this side to lay down anything definite; but it is obvious that the States, big and small, are at present in various stages of advancement—political, social, economic, administrative, and so on; and in the circumstances, I have no doubt that it will be according to the conditions prevailing in each State. That is to say, if there are Legislative Assemblies, the actions of the Governments of the States concerned will doubtless be based on lines different from those in States where there are no Assemblies. We hope in time that the majority of the States will have such institutions. But the method of sending representatives to the Lower House will inevit-

ably have to be left to each State according to the conditions prevailing therein.

For my part, may I say that, having a Legislative Assembly, and having had it since 1913, I have not had time to go into that question in detail; and much will depend on what the final scheme evolved here is and the completed picture. I have no doubt that we shall have some method by which the Bikaner Legislative Assembly will have a voice in the selection of our representative in the Lower House. But I am giving you my personal views; I want to make that clear. His Highness of Bhopal wishes me to say that he shares exactly my sentiments in regard to his State, where he also has a Legislative Council.

As regards representation by groups of States, there are certain questions which may come up for discussion at a later stage. If there are any of the important States—by which I mean in the upper category of States, big and small—which have to be grouped, those are points, like some other points, on which we shall have to have discussion and settlement later on amongst the States with the assistance of the Viceroy. The question of how the groups will do it is a point which will have to be discussed then. If I may say so, I am particularly glad to hear what Sir Tej has to say on this matter. I hope he has expressed the general sentiments of our friends from British India. I am referring to his statement that the question of the distribution of seats *inter se*, and so on, is a matter for the States to consider with the British Government—or, as I prefer to say, with the Viceroy as represntative of the Crown.

As regards the method of selection, in case of nomination, our views are that, whilst the method will be based on lines analogous to those obtaining in British India, it is possible that there will be certain necessary modifications to meet local conditions; and the rules will have to be made in this connection by the individual States or groups of States federating.

Sir Tej Bahadur Sapru has already cleared up one point, namely, that in case there are officials from the States in the Upper House there will be a difference; and the case of official Ministers, and so on, who may resign will also have to be provided for.

Questions (iii) and (iv) do not concern the States; but question (v) deals with the provision to be made for the representation of special interests other than communal interests. We feel again that that is largely a matter for British India; but we feel that the numbers should be included in the quota of British Indian representation. We shall doubtless have further opportunities of discussing the question of special interests later on.

Chairman: I should like to be quite clear about that last point. I am not laying down anything at all now, but do I follow you rightly in thinking that if the representation were 50/50 or 60/40—whatever the proportion might be—in the Upper Chamber, any special representation should in your view be included in the num-

bers for British India and not be regarded as something extra, outside the whole?

H. H. The Maharaja of Bikaner: That is a question we might take up when we come to deal with the question of the representation of special interests.

Chairman: Yes, but I thought I understood you to say it had to be included in the quota of British India.

H.H. The Maharaja of Bikaner: We should like to discuss that further and take it up again, when that point comes up.

Chairman: Certainly.

H.H. The Maharaja of Bikaner: With regard to the qualifications for membership of the Upper and Lower Houses, it is important that, in our own interests, our representatives should have proper qualifications, so that the members we send will not be treated as inferior. From that point of view it will be very useful to us to know finally the details of what is to be settled or proposed in regard to the representation of British India.

Chairman: You would probably try to approximate your qualifications to theirs.

H.H. The Maharaja of Bikaner: Speaking for myself I have no doubt about it; and of course there is also the question of disqualification.

Chairman: Yes. It would be rather odd if in British India you had to be 40 years of age to be a member of the Upper House, whereas in the Indian States you need only be 22.

H.H. The Maharaja of Bikaner: In paragraph 26 of the Second Report of the Federal Structure sub-Committee the matter is referred to.

On the question of the Oath of Allegiance, I do not think it is necessary for anyone on this side to speak even a word in support of our well-known loyalty to the King-Emperor. Many of the Princes have even risked their lives on the battlefield for their King-Emperor. As, however, it is a question of the sovereignty and internal autonomy of the States, and of their being a separate entity, this question has to be examined to see that there is no change in the status of the States. What we consider of special importance to us is that no form of the Oath of Allegiance, or anything in that connection, should detract from the allegiance of a subject of an Indian State to the Sovereign of the Indian State concerned. If I did not misunderstand you, Lord, Chancellor, I think you said you were going to circulate something on this matter.

Chairman: Yes, I will circulate something on this point.

H.H. The Maharaja of Bikaner: It would be very useful to us to know what suggestions you have to help us. We might take up that question again.

Chairman: Yes, later on, certainly.

H.H. The Maharaja of Bikaner: With regard to question (viii) —the provision to be made for nominated members—we take it that that is meant to provide for Crown representatives.

Chairman: Yes.

H.H. The Maharaja of Bikaner: I have nothing special to say at present on that subject, except that we do not want questions of paramountcy and matters of personal concern to the Princes—dynastic questions and so on—to be included in that.

Chairman: No.

H.H. the Maharaja of Bikaner: I think that is all.

Sir Akbar Hydari: As you were good enough to give me an opportunity of speaking on the first day, I do not feel that anything in the way of introduction is required of me. We must all welcome, as indeed we all have done, the presence of Mr. Gandhi in our midst; and I share in the hopes, so widely and fervently held, that his presence, completing as it does the representative character of this Conference, will assist the progress of our deliberations to a speedy and useful conclusion.

I understand that at this stage I am only expected to pass in review the subjects which come under Head 2.

Chairman: Quite right.

Sir Akbar Hydari: I shall be able to add to my remarks if the subsequent discussion should demand it. My task is very much facilitated by the fact that most of the questions under Head 2 relate to British India, and with these I shall not deal unless, to use the phraseology of my respected friend, Sir Tej Bahadur Sapru, any question is raised and discussed about which I feel that the interests of this side are in any way involved. Moreover, those questions which relate to the Indian States specifically have been, as Your Lordship has pointed out, discussed at the last Conference at some length and a good many decisions concerning them have been tentatively arrived at. They have been left subject to decisions on such questions as relate to the powers of the two Houses which, however, are not dealt with under Head 2 but under Head 3.

So far as the Indian States are concerned, with regard to sub-head (i) and with regard to sub-head (vi), I think we are all on this side united; and Sir Tej Bahadur Sapru has also given us his support that that must be left to the Indian States themselves. But here I should like to make clear what is possibly not realised outside our States—that we claim to speak with as great emphasis as was used this morning by Mr. Gandhi, that we are also the spokesmen of the dumb millions of our subjects. In the matter of representation, our object, we feel, is the same as his—namely, the welfare of these millions. Our methods may be different. Because a certain way of attaining this common objective is chosen by British India, the same method should not necessarily be imposed on the States provided that our objective remains the same. In this connection I should like to refer to the appeal which Mr. Gandhi

made to this ancient land of Hindustan and to the culture which it represents. I make bold to say that Indian culture—whether it is Indian art, whether it is Indian literature, whether it is Indian music, whether it is the "unbought grace of life" to which Burke at one time referred—all these, I say, are represented much more and developed much more in the Indian States polity than, I venture to say, they are at present in British India. And, therefore, I appeal to all who seek for a greater India, for a united India, for an all-India, to see that this instrument for preserving this culture is not ruthlessly or with an unsympathetic hand destroyed.

In this connection I may remind you how, for instance, in the old Indian ideas of polity, there was a kind of representative government—not representative in any other sense, but still representative in this sense, that it tried to bring the Ruler and the ruled intimately into contact with each other—the old durbar idea; and I am not letting out any secret if I say that my Government is trying in its own way to see how the people may be really brought into intimate contact with the Government, so that they may have an opportunity of expressing their views and the Government may have an opportunity of expressing its policy to them. And it is just possible that we may be able to find a solution of this question in a way which is more in consonance with our own traditions and with our own present peculiar position. I may illustrate how many institutions get transformed when they are transferred to an Indian State's soil, when I say that Hyderabad has had a Legislative Council for many, many years—for certainly over 25 years, during which my connection with that State has remained since I severed my connection with British India; and you will all be surprised to hear how, in that Legislative Council we have officials, and yet times without number I, as the Home Secretary, have brought forward measures, and I have been defeated by the votes of officials. The reason is not far to seek. It is because there everybody feels that he represents not any particular consolidated interest which does not belong to the country, but that they all belong to that State itself, having an allegiance to the Ruler who stands for that State, its progress, and the prosperity of its people. Therefore I beg of you to leave this question of representation, whether in the Upper or in the Lower House to the patriotism and to the sense of sympathy with the people which exists in the States themselves, so that they may, in their own way, try to find out how best they can supply that need, and at the same time preserve the State as an instrument of that culture of which the Indian States are really the present relics.

I now come, Sir, to the only other question which is pertinent to the Indian States on this matter, and that is to the Oath of Allegiance. As to that, I beg to submit that such an Oath should have two elements and two only. One is our loyalty to the King-Emperor and the Crown, in connection with which we of the Indian States desire that it shall be perennial and indissoluble; and the other that the Oath should not, to use the formula of our respected

Chief here, in any way detract from the allegiance of an Indian State subject to the Sovereign of the Indian State concerned.

Sir, I have done. I have endeavoured to approach the different questions which you have brought under Head 2, as I shall always approach the questions which we shall have to discuss at this Conference, having one sole aim—the good of India. That lies in looking, not to British India alone, but to the Indian States also, and to the relations of these two with Great Britain—an indissoluble connection which we shall always value. All these interests should not be treated as antagonistic but as complementary. That has been, and will be, the basis of all my suggestions.

(The Committee adjourned at 4-20 p.m.)

PROCEEDINGS OF THE TWENTY-THIRD MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON WEDNESDAY, THE 16TH SEPTEMBER, 1931, AT 11 A.M.

HEAD 2.

Questions connected with the Election of Members of the Federal Legislature—(continued).

Sir Mirza Ismail: Lord Chancellor, In the few remarks which I propose to make under this Head I shall attempt to answer only those questions in which the States are interested, and not those which concern mainly, if not entirely, British India.

Taking first the method of selection for the Upper Chamber, I feel that the representatives of the States on this body should be chosen by the Governments of the States and groups of States; in other words, these members would be delegates of the Governments nominating them. The States would be expected to select, as far as possible, persons of similar standing to those coming from British India—persons of weight, character and experience, including those with official experience.

As regards the Lower House, the method of selection should be left entirely to the States. Conditions vary so much in different States that it does not seem either useful or practicable to lay down a hard and fast rule applicable to all States alike. Each State may be left to determine for itself the best method of selecting its representatives having regard to the conditions and circumstances existing in it. The States will no doubt realise that the best and the most approved method of sending representatives to a popular Chamber is by popular election which may be either direct or indirect. This is the goal which they should keep constantly in view, to be reached as quickly as possible. I do not think that this Committee need go further than this; the rest may well be left to time and the inexorable logic of events.

With regard to the method of selection of representatives from groups of States, I am unable to offer any useful suggestion. I would only say that this, and the still more important and difficult question of the distribution of seats among the States, should be referred to a strong and impartial committee specially appointed for this purpose by His Majesty's Government. This committee would take evidence and, after considering all points of view, would submit their recommendations to the Government, who would then allot seats to each State and group of States in accordance with those recommendations, or with such modifications as may be considered desirable or necessary by them. It is to my mind extremely unlikely that the States would or could possibly come to an agreement among themselves on the many intricate and delicate issues that are bound to arise in the consideration of such a difficult problem.

Then there is the question: By what method is the seat of a nominated State's representative to be vacated otherwise than by death or dissolution or resignation? I venture to think that the practice in the States should be analogous to that now followed in British India as regards both the official and non-official members nominated by the Government.

Lastly, with regard to the Oath of Allegiance, this, it seems to me, is really a very simple matter. I do not see why there need be any hesitation on the part of the representatives of the States sitting in an all-India Legislature to take an Oath of Allegiance to the King-Emperor, who is the recognised head of the entire country. Such an Oath would not detract in any way from the loyalty which the representatives of the States owe to their own Rulers. This is all that I have to say.

Sardar Ujjal Singh: Lord Chancellor, I am grateful to you for the opportunity given to me for the expression of my views. You will pardon me, Lord Chancellor, if I repeat the sentiments expressed by several of my colleagues with regard to the deep debt of gratitude that we owe to you for the manner in which you conducted and guided the proceedings of this Committee at its last Session. By your deep sympathy, unparalleled courtesy, patience and resourcefulness, you captivated the hearts of the members of this Committee, and I am confident that you will not fail to capture the hearts of the new-comers as well. If the past is any guide to the future, I have no misgivings as to the success of this which I believe to be the last Session of the Federal Structure Committee.

I am very gratified that we now have in our midst Mahatma Gandhi and Pandit Malaviya, two of the most distinguished of my countrymen. Mahatma Gandhi commands the respect of his fellow-countrymen, whether or not they agree with his views, in a manner that no other single individual has ever commanded it. The presence of these two gentlemen is a striking testimony to the success of the last Session of the Conference as well as to the statesmanship of Lord Irwin.

While I am pleased at the fact that certain interests which were not represented before are now represented, and certain interests which were inadequately represented find fuller representation now, I cannot help expressing my sense of disappointment, and the disappointment of my community, at the fact that we have not been able to secure the appointment of an additional Sikh Delegate to the Conference. I well realise that votes do not matter in the deliberations of such Conferences and Committees as these; but important decisions have to be taken, and the advice and assistance of colleagues would be valuable on many occasions. I hope that by the time the Minorities Committee meets it will be possible to nominate another Sikh Delegate.

The Federal scheme that was devised at the last Session of the Conference was deliberately meant to be provisional. It gave some of us an opportunity to consult those whom we have the honour to represent. Many of us have engaged in such consultations; and I venture to say, on behalf of the Sikh community, that, although the Sikhs are agreeable to the main principles outlined in the scheme, they cannot very well commit themselves to any scheme unless they are assured of their position in the new constitution. Unless the communal question, which, in the Punjab, means the Muslim-Sikh question, is settled, it is not possible for the Sikhs to commit themselves to a Federal scheme in which the Punjab would be an autonomous Province. I am not without hope, that, with the advice and guidance of Mahatma Gandhi, we will yet be able to find a solution for this most baffling problem.

With your kind indulgence, My Lord, I have made these few general observations. I will now come to the points under discussion, and I will take them in the order in which you have placed them.

So far as (i) and (ii) are concerned, I feel that these are primarily the concern of the States. As was rightly pointed out by Sir Tej Bahadur Sapru, we do not mean to dictate any terms in this matter to Their Highness. I was very gratified to hear yesterday from Their Highnesses of Bikaner and Bhopal that they were prepared to let their Assemblies select members for the Lower House.

H.H. The Maharaja of Bikaner: To have a voice in the selection.

Sardar Ujjal Singh: I hope the Assemblies will have an effective voice in the selection of representatives for the Lower House of the Federal Parliament. I believe that other Princes will follow this patriotic example set by Their Highnesses of Bikaner and Bhopal, not only in the interests of India as a whole, but in their own interests.

In the Upper House, of course, Governments of federating units have to be represented, and in this matter there is no dispute that the States' Governments ought to send their representatives. The representation of the smaller States is of equal importance, however, and some method will have to be devised for their grouping, as

it will not be possible to give individual representation to a large number of States. This matter also is mainly the concern of Their Highnesses; but some sort of electoral machinery will have to be devised so that no small State will be left unrepresented.

With regard to (ii), this question of vacancies arises, not only in the case of the representatives of the States, but also in the case of the representatives of British India. As was pointed out by the Lord Chancellor yesterday, in addition to vacancies caused by death or resignation there is generally a provision for vacancies which may arise on account of incurring any disqualification, and this applies both to the British Indian representatives and to the States' representatives.

I now come to sub-head (iii). With regard to the representation in the Upper House of British India, at the last Session of the Federal Structure sub-Committee we arrived at the decision that indirect election from Provincial Legislatures by the single transferable vote was the best method; and I see no reason for revising my opinion on that point except that, in some cases, reservation of a fixed number of seats will have to be provided for important minorities which may not find adequate representation by the above method. In most of the other federations, in the Upper House, the governments of the component parts of the federation are generally represented; and that is the best way of giving representation to the component parts. Moreover, by providing this constituency of Provincial Legislatures, we give a wider electorate for the Upper House than if we were to adopt the method of indirect election from the Lower House.

I come now to the very important point of direct or indirect election for the Lower House. I have studied very carefully the point of view that Lord Peel and Sir Samuel Hoare put forward at the last Session of the sub-Committee. The two arguments that were advanced were, first, the size of India and, secondly, its population—which, it is said, make it impossible to give its representatives a representative character and keep them in touch with their electors. In this connection I should first like to deal with population and the number of voters. At present, so far as the Legislative Assembly is concerned, for 105 elected members we have one and one-eighth million electors. That is to say, there are about 11,000 voters for each member with the existing franchise. Even if the franchise is enlarged three or four times we shall not have more than four million voters; and, on the assumption that we are going to have 200 members from British India, we shall not have more than 20,000 voters for one member, which is not a very high number. If you compare this with the constitution of any other country, you will find that this number of 20,000 is far too small. With regard to the size of constituencies, you will find that at present we have certainly got big constituencies, but with doubling the number of members from 100 to 200 the size of the constituencies will be reduced; it will be exactly halved. But even with the existing size of the constituencies, it will be interesting to

note the interest taken by the voters in the elections of the Assembly. In the last election but one, the number of voters who took part in the elections was 48 per cent., in spite of the fact that Burma, being far away from Delhi and probably feeling not so much interested, polled only 13 per cent. of the voters. Excluding Burma, the British Indian voters who recorded votes were about 60 per cent., which is not a bad figure. But if the size of the constituency is halved, certainly a larger number of voters will come forward to the polling booths.

Of course, Sir, precedents are not always to be followed, but they are sometimes a fair guide to any action that one may consider taking; and, in this connection, I would like to refer to other constitutions and to federations which are as big as that which we are going to form in India. The size of Canada is 3,729,000 square miles as compared with British India's 811,000 square miles. (I am excluding Burma—not that I am anxious to exclude Burma, but because the figures have been supplied excluding Burma.) The area of Australia is 2,974,000 square miles, and of the United States of America 3,743,000 square miles. Now, in all these countries having a federal constitution, direct election is the method of election to the Lower House; and in fact I do not know that there is any country in which the Lower House is elected by any other method than the direct one. The Government of India, in their Despatch, attached great importance to the views of the Indian public on this point. They stated:—

> "We feel that the method of election is essentially a matter on which the considered judgment of Indian opinion should have great weight";

and Indian opinion has been expressed in no doubtful terms. The people think that they lose touch with an institution with which they do not come into direct contact. I would therefore advocate strongly the method of direct election for the Lower House.

With regard to point (v)—the representation of special interests—in the last sitting of this Committee we decided that certain interests—for example, the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce (European and Indian) and Labour—ought to be represented if they cannot find representation otherwise. Yesterday it was asked whether the Universities should be represented. At present the Universities, I believe, are not represented in the Indian Assembly or in the Council of State; but Universities are represented in the local Legislatures, and I would certainly advocate the representation of the Universities in the Provincial Legislatures, but not in the Federal Parliament.

Sir Muhammad Shafi: You need not trouble about that. That is a matter for the Provincial Constitution Committee.

Sardar Ujjal Singh: That is true. With regard to the qualifications for the Upper House, again we decided last time that there should be the same qualification for the members of the

Upper House as now prevail for the Council of State, which is a property qualification or a certain income. The age limit at present is uniform for the membership of all Legislatures. It is 25. I am prepared to revise my opinion on that. Instead of 25 it may be raised to 30 in the case of the members of the Upper House; but the property qualification should certainly be retained, and, besides, certain persons who have rendered useful public service or possess special attainments, though not possessing property, may also be eligible for the Upper House. Such a provision exists in the Irish Constitution.

With regard to point (vii)—the provision for an Oath of Allegiance—I do not think that there should be any great difficulty about drafting some such Oath of Allegiance, on the model of the Irish one, as would be satisfactory both to the members of the States and to British India.

On point (viii), I do realise that, for the transitional period, there may be certain subjects which may be called Crown subjects; and if there are Crown subjects there should be some sort of representation on behalf of the Crown. But honourable members will see that the official members are not likely to influence the decisions of future Assemblies as they have been doing in the past, and there will be no useful purpose served in having a large number of official members. The number ought to be restricted to the extent to which it is absolutely necessary for explanation or satisfying the members of a Federal Assembly on special points pertaining to the Crown subjects. Besides nomination of such members, there will be invited, from time to time, experts who shall not vote, for the explanation and elucidation of the points concerning the Crown subjects.

That is all, Sir, that I have to say.

Mr. Zafrullah Khan: Lord Chancellor, before I proceed to make my submissions on the various subheads of Head 2 which are at present under discussion, I may say that anything I say will be subject to the reservation which Sir Muhammad Shafi put forward yesterday.

Chairman: In future I think we may regard that as a common form at the beginning of each speech.

Mr. Zafrullah Khan: But I may be permitted, for the better understanding of what I have to say, to say one word with regard to that reservation. It is this: that the reservation put forward by him. with regard to the Muslim claim, applies to the total strength of each Chamber of the Federal Legislature, including special and State representatives. Therefore it will be easier to follow the submissions that I have to make if it is kept in mind that my submissions stand only in case that claim is given effect to. I do not mean that otherwise I should have nothing to say; it only means that otherwise my submissions might in some respect have to be modified.

I will now make my submissions on the various heads; but, with your permission, Lord Chancellor, I might preface what I have to say by expressing my general agreement with regard to what has fallen from my colleagues under sub-heads (iii) and (iv) before I make my submission on sub-heads (i) and (ii). I agree that the British India representatives in the Upper Chamber, other than those representing special interests, should be indirectly elected by the Provincial Legislatures; and I also agree that British India representatives in the Lower Chamber should be directly elected by territorial constituencies. Having said that, I need not, in support of this agreement, adduce any further arguments than those that have already been submitted.

Now, with regard to the first and second sub-heads, having said that the British India representatives to the Upper Chamber should be elected indirectly by the Provincial Legislatures, it necessarily follows that, with regard to the State representatives, one must accept the position that the various State administrations would select or nominate their representatives to the Upper Chamber. With regard to the Lower Chamber, however, I beg your indulgence, Lord Chancellor, and that of Their Highnesses, to go a little further than what has been submitted by some of my colleagues on this side. To begin with, one must realise that a certain amount of uniformity would have to be insisted upon in connection with the election and qualifications of these representatives. Take, for instance, the matter of the disqualifications. I am not at present going into what those disqualifications should be; but it is obvious that some kind of disqualifications will have to be imposed with regard to the election or selection of representatives to the Federal Legislature. And I cannot conceive that the disqualifications with regard to British representatives and States' representatives could be any different. For instance, it would be a disqualification with regard to a British India representative if the person seeking to be elected to either Chamber of the Federal Legislature were not either a British subject or a Ruler or a subject of an Indian State. Now, it would be rather an anomaly if it were open to the States either to select or elect as a representative a person who did not fulfil that qualification. Again, in the case of serious crimes or in the case of undischarged bankrupts, it would be a serious anomaly if A, who was subject to one of those disqualifications in British India, could either be elected or selected by one of the States as its representative in either Chamber. Without, therefore, enlarging this part of my argument any further, I would submit that the question goes a little deeper than has been assumed in the discussions so far. Uniformity to a certain extent, as I have said, would not only be desirable but would be necessary.

Now, no doubt, Their Highnesses have insisted, and certain of my friends of the British Indian Delegation have agreed, that the question of selecting their representatives for both Chambers is a matter to be left entirely to the States themselves. I beg to differ from this view. We are sitting here round this table without any

desire on any side to dictate to anybody; but with the fullest liberty to put forward our views with regard to matters which have been assumed to be matters of common interest. Yesterday afternoon His Highness of Bikaner was pleased to remark that, even if they agreed to certain matters with regard to the selection of their representatives, it would not be possible for them to enforce that agreement with regard to all the States. Well, of course, that is perfectly true. Even with regard to coming into the Federation, any kind of agreement arrived at here would not be binding upon any State. It would be open to any State, after looking at the completed picture, as it were, to say whether it would be feasible for it to come into the Federation or not. Their Highnesses cannot guarantee that any rules laid down with regard to the selection of their representatives will be agreed to by other States; but no more can they guarantee that any other States will agree to make Federal those subjects which their Highnesses here agree to make Federal. Nevertheless, a certain amount of agreement has to be arrived at on these matters before the thing can be put on a working basis. Therefore, with regard to the question of States' representatives to the Lower Chamber, I would, with very great respect, submit to Their Highnesses that it would be a very anomalous position if it were insisted upon on this side that representatives from British India must be elected representatives, and elected directly, and yet it were left open to the States to send in their representatives by nomination. A wealth of argument has been adduced in support of this proposition, and it seems to me to have been generally agreed upon that that would be the only desirable way of having the wishes of the people represented in the Lower Federal Chamber. Well, what is desirable for British India is certainly desirable for the Indian States; and a suggestion that that should be so with regard to the Lower House does not deprive Their Highnesses and their Administrations of the right of being directly represented as Rulers and Administrations in the Federal Legislature, inasmuch as I have already submitted that it would be desirable that their representatives to the Upper Chamber should be nominated by Their Highnesses or their Administrations.

Chairman: Would you mind my asking you a question now? Is it your view that the representatives ought to be paid, or do you think they ought to be unpaid?

Mr. Zafrullah Khan: If the question is addressed to me, Lord Chancellor, my view is that, apart from any travelling allowances or subsistence allowances which are at present being paid to members of the Legislature when they actually attend meetings of the Legislature, there is no necessity for making any further payments.

My suggestion, if adopted, would eliminate a good many of the difficulties that are otherwise likely to arise. For instance, take the allotment of the quota of members to be sent by different States and groups of States. With regard to the Lower Chamber at any rate, once the principle of election is accepted it would be easy to

allot a quota of members for the Lower Chamber to the different States and groups of States which come into the Federation.

With regard to the qualifications of these members, I have already said that there must be uniformity with regard to disqualifications, because, if it is undesirable to have someone in the Legislature when he comes from British India, it is just as undesirable to have him if he comes from the States. With regard to qualifications, however, one need not insist that, if the principle of election is introduced, the franchise qualifications should be the same throughout. The franchise qualifications in the States need not be the same as those in British India.

Sir Tej Bahadur Sapru: Why do you make a distinction?

Mr. Zafrullah Khan: As a matter of fact, with regard to the election of members of the Assembly and Council of State at present, I do not think that there is throughout uniformity in the different Provinces. The reply to Sir Tej Bahadur Sapru's question, however, is that one does realise that this business of elections would be introduced into the States for the first time; and, it being introduced for the first time, one would expect a little time would be required for the States to adjust their franchise qualifications to the qualifications existing in British India, where the principle of election in one form or another has been current for some decades. I need not remind Sir Tej Bahadur Sapru that although certain things are very desirable in certain directions, limitations and exceptions have, at least for a time, to be made with regard to some matters. If his objection were that, the moment you start the constitution, you must start it on the basis of the same franchise qualifications in the States as exist in British India, I would even be agreeable to having some time limit laid down within which States' representatives should come in by election. What I have submitted, however, is the view which I am putting forward and it is a view which would remove a good many of the anomalies.

Sir Maneckjee Dadabhoy: But it is a view with which the Princes themselves do not agree.

Mr. Zafrullah Khan: It is a view to which the Princes yesterday had no objection, though I understood they were not willing, or perhaps did not consider it desirable, that it should be put into practice immediately. It is a view with regard to the principles of which, whatever may be the method of enforcing it, they have no objection.

H.H. The Maharaja of Bikaner: Some of us, individually have no objection.

Mr. Zafrullah Khan: Yes.

With regard to the second sub-head, my submission is this. I have only two remarks to offer. In addition to the vacation of a seat by death, dissolution or resignation, there is of course the question of disqualification. The moment any representative of the States, as much as any representative from British India, incurs

one of those disqualifications which would have originally shut him out from being nominated or selected or elected to one or other of the Chambers, it should necessitate his resignation or removal.

With regard to those representatives who might be sent from the States by virtue of their office, I am in agreement with what was said yesterday; namely, that when they cease to occupy that office they would of course cease to be members of the Federal Legislature as representing the particular State or group of States by which they were sent. I should like to make the suggestion, however, that where the States send representatives to the Upper Chamber by virtue of their office, it might be made clear on the occasion of the nomination that the nomination is by virtue of the office, so that, if the office is vacated subsequently, everyone will understand that the seat is vacated also. For instance, if the Prime Minister of a State is nominated *qua* Prime Minister, it should be made clear that he is being sent because he is Prime Minister; and if he ceases to occupy that position he will vacate his seat.

The next observation I have to make relates to the provision for the representation of special interests, which is dealt with in sub-head (v). Here my very brief submission is that, in my opinion, the interests specifically mentioned in paragraph 34 of the Report of the Federal Structure sub-Committee should have representation in both Chambers—that is to say, the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce (European and Indian) and Labour. There is no point in having representation for the Universities in the Federal Legislature.

Chairman: Will you tell us in what way they would be appointed, if that is convenient to you? In paragraph 34 of the Report we have a reference to the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce (European and Indian) and Labour. The point I am on is how you think their representatives should be appointed.

Mr. Zafrullah Khan: By devising special constituencies for them in each case, with franchise qualifications which need not necessarily be in accord with the qualifications for the general constituencies. For instance, take the Depressed Classes. With regard to the Depressed Classes, once it is settled what is the quantum of representation that is to be allotted to the Depressed Classes, the distribution of that quantum of representation into constituencies may not be on the same scale as it would be in the case of the general constituencies, and in their case the franchise qualifications may be different from those that are devised for the other constituencies. The same might apply in the case of the Indian Christians, Europeans, Anglo-Indians, and so on. With regard to the Landlords, once the quantum of representation for Landlords has been decided upon, special franchise qualifications for the Landlords' constituency or constituencies would have to be devised, but the representation would be by means of election.

I come now to the question raised in (vi), namely—

> "Are any special qualifications to be laid down for eligibility for membership of the Upper House?"

I agree generally with what has been stated by Sir Muhammad Shafi yesterday with regard to age limit, experience and property qualifications and also that generally the qualifications for the Upper Chamber may be the same as those that operate at present for the Council of State.

But here, in order to avoid having to make a second submission on the same heading, I should like to say a word with regard to the question of disqualifications. Generally speaking, the disqualifications laid down under the present rules may be adopted, but the observations that I wish to make are in connection with the question as to whether conviction for a political offence should or should not involve a disqualification from membership of the Upper Chamber of the Legislature—and for the purposes of my submission it would apply equally to membership of the Lower Chamber. The difficulty here is this. It would be extremely difficult to make a separate category of political offences and to decide what is and what is not a political offence.

Chairman: Would the words "moral turpitude" be of any use to you?

Mr. Zafrullah Khan: That would certainly be useful. A conviction for an offence involving serious moral turpitude might disqualify and the others might not. I need not go on to give instances; but often and often with regard to dacoity in India, for instance, it would be difficult to determine whether a particular dacoity was a political dacoity or was an ordinary dacoity where the persons taking part in the offence wanted to enrich themselves illegally at the expense of others, and so on. It is the difficulty of defining what would or what would not be, in certain circumstances, a political offence, that would make it difficult to lay down any special rules with regard to that. Of course, another consideration that might be helpful in this connection is the amount of punishment provided for certain offences; and if a conviction for an offence, for which the punishment provided is not very serious, were not to operate as a disqualification, the large majority of political offences would in that way be excluded.

I need make no remark with regard to the question raised in sub-head (vii); and I might conclude with just one suggestion with regard to the matter raised under sub-head (viii)—nominated members. With regard generally to the right of the Governor-General to nominate members to either Chamber, I would have no objection to the suggestion contained in the last three lines of paragraph 34 at page 25 of the Report:—

> "that the Governor-General should be empowered to nominate a specified number of persons, not exceeding, say, 10, to each Chamber."

With regard to the suggestion that when any particular question requiring technical or expert knowledge or advice is under discussion, the Governor-General should have power to nominate experts on the question which is being discussed, my submission is that the Governor-General should have power to nominate, say, not more than three such members, who may be in addition to the ten specified in the last three lines of paragraph 34, for the purpose of assisting and advising the Chamber when any such question is under discussion.

With regard to the question put by Your Lordship yesterday as to whether such members should or should not have the right to vote; having regard to the submission I have made that their number shall not exceed three in either Chamber, it really is a small matter; but my personal submission in this connection would be that such members, when they are nominated to a Chamber and are in the Chamber, should be for that purpose full members—that is to say, they should have the right of speaking in the same manner as ordinary members of the Chamber have, and on that particular question they should also have the right to vote—not that that vote is ordinarily likely to make any difference in the decision of the House one way or the other, but I would wish these nominated expert members to feel that they were just as full members as anyone else while that question was under discussion, and that they were not in the position merely of, as it were, outside advisers with regard to that question. That is all I have to submit.

H.H. The Maharaja of Bikaner: May I ask one question? I think Mr. Zafrullah Khan said that the representatives of the States should be either British Indian or State subjects. Did I understand correctly?

Mr. Zafrullah Khan: No, Your Highness. What I said was this, that at present the ordinary rule is that a person who offers himself for election should be either a British subject or a Ruler or a subject of an Indian State; and I submitted that, if there was a similar qualification insisted upon in British India in future, it would be rather anomalous that whereas an alien, for instance, could not be elected from British India, he might be elected from the Indian States.

H.H. The Maharaja of Bikaner: But that would be excluding British or Indian States' subjects, not merely British Indian?

Mr. Zafrullah Khan: Oh, yes.

H.H. The Maharaja of Bikaner: Thank you very much.

Mr. Zafrullah Khan: And I said that would be an anomaly.

Mr. Iyengar: Lord Chancellor, I hope you will give me the indulgence, which I claimed on the last occasion when I spoke, as a new member who is not conversant with all the discussions that took place when the subjects which have been grouped under Head 2 were discussed, and in some form or other provisional conclusions were entered in your Report. I therefore beg that, if I am a little

longer than I should desire in the ordinary course, the Committee will bear with me.

It seems to me, My Lord, that, so far as the composition and method of election of the Chambers of the Federal Legislature are concerned, the main principle to be borne in mind is that we are now in the process of drafting what I have already insisted upon as a federal constitution. We have also agreed that the Federal Legislature should have two Chambers. In considering, therefore, how we may constitute a Lower Chamber and an Upper Chamber there are different principles which might be put into operation; and we have got to be perfectly clear, when constituting the Upper and the Lower Chamber, what principles we shall adopt in regard to them.

As I conceive it, My Lord, a Lower and an Upper Chamber may be established on the footing that one Chamber will represent conservative, stabilising elements, and the other Chamber democratic and progressive elements. We may also conceive of the Lower and the Upper Chamber as on the one hand a legislative and financial Chamber—namely, a Chamber which possesses the primary legislative and financial powers—and an Upper Chamber which possesses revisory or suspensory powers, and in some cases even some kind of administrative powers. Lastly, as I say, in a federal constitution particularly, the principles that are usually adopted in constituting the two Chambers are that while the Lower Chamber represents what may be called the National principle, the Upper Chamber will be constituted on what may be called the *Staat* principle. In the discussions that have proceeded so far I find that there has been, very naturally and very properly, a combination and mixture, if not a confusion, of all these three principles, when we considered certain proposals as to how they should be constituted—how the selection should be made. I am only anxious, My Lord, that in so far as the Federal aspect of it is concerned, we should primarily make it a point that the principle of representing the states should be strictly confined to the Upper House of Legislature, whereas the principle of representing the nation as a whole—and all the Indian Princes as well as British India are united that we shall be a nation and that we shall have a national constitution before us—should be strictly enforced in the Lower Chamber.

Proceeding on that footing, My Lord, my appeal to the Indian States and Their Highnesses is that, having accepted federation and all that it implies, they should, along with us, sit together and co-operate to accept federation's implications. As has been repeatedly pointed out, we on this side would be quite willing to give them time to carry out all that this implies; but it should be perfectly clear that, in the fully evolved Federal Constitution, the Lower Chamber should be a Chamber which represents the principle of Indian nationality, in which the citizens of Indian States and the citizens of British India should have equal rights as

well as responsibilities, without distinction of classes or creeds or even of the boundaries which politically may divide.

Therefore I feel, My Lord, that this Committee should consider—and I would put it for the consideration of Their Highnesses—the adoption of the principle that the Lower House should be constituted upon a genuinely democratic national basis, and the Upper House on a State or Provincial basis. The Lower House will, as in all constitutions, possess the money power; and no taxation without representation should be the fundamental maxim, whether it is the people of the States or of the Provinces that are made to contribute to the National Exchequer. Whatever powers or authorities are legitimately possessed and exercised in respect of their revenue by Rulers . . . .

Sir Sultan Ahmed: My Lord Chancellor, this point arises under Head 3.

Chairman: It does arise under Head 3; I had observed that; but no doubt Mr. Iyengar is just giving a brief introduction to his real point.

Mr. Iyengar: Thank you, My Lord. In regard to accepting the principle of election to the Lower Chamber, I was merely trying to elaborate the point, My Lord Chancellor, that there is no conflict of interest between the Rulers and their own subjects where Federal burdens, for instance, are sought to be imposed for the administration of Federal subjects by those who are in charge of Federal administration. There can, therefore, be no justification for putting themselves and their subjects at a disadvantage in the Federal Constitution in this respect. As Sir Tej Bahadur Sapru very properly pointed out yesterday, the position of those who come to the Lower House on the footing that they are mere nominees of the Princes or of the Governments of those States, would not be very enviable; and they would be put on an equality with representatives from British India only if they were elected and brought into the Lower House on the same status as those who represent British Indian Provinces. I put this, My Lord, from the standpoint of British India; and I need not say that, from the point of view of the subjects of Indian States themselves, this demand is one which they have a very legitimate reason to make, and is one which, in course of time, if not immediately, all the States are bound to concede to their subjects.

If the principle I have tried to elucidate commends itself to Their Highnesses and the statesmen who are here on behalf of the Indian States, the question of representing individual States or of grouping these, so far as the Lower House is concerned, seems to me in some respects secondary. I would put it forward in this manner, My Lord Chancellor, that, in discussing what are the interests that should be represented in the Lower House, we have to take into consideration that the interests that could properly be represented in the Lower House are economic interests, if I may say so—territorial interests, regional interests or interests of common culture or of common language. Linguistic and cul-

tural affinities, territorial interests, common economic interests are, it will be found, much stronger in the case of many States *vis-à-vis* their British Indian neighbours than the interests which could group Indian States together from distances far apart. From that standpoint, the position that the subjects of Indian States should possess the franchise seems to me likely to ease the difficulty of trying to group them. I may just illustrate this by one or two actual instances. Speaking from the experience of my own Province, there is a very small State called Pudukkottai. It is a State situated in the midst of a number of British Districts with which the subjects of that State have very large affinities, very large economic interests. My Lord, I personally believe that the interests of that State would be better served if leading Indian publicists from the neighbouring districts are able to represent their interests in the Lower House. Contrariwise, I would submit that there are many eminent subjects of the Pudukkottai State, learned, important and influential, who should be in a position to represent the neighbouring British Districts in the Lower House of the Federal Legislature. I want to know why either of them should be prevented from representing the interests of the other in the Federal Legislature when there is so much in common, and only this difference of allegiance to the Indian State Ruler which divides them.

Sir Maneckjee Dadabhoy: Is there any precedent for this in any constitution?

Mr. Iyengar: Yes; in the American Constitution the House of Representatives is elected on a popular basis.

Sir Maneckjee Dadabhoy: Neighbouring States and neighbouring interests?

Mr. Iyengar: What I am maintaining is the principle that there is nothing to divide. For instance, there is no disqualification on a member of the House of Representatives in the United States of America being elected from among the citizens of another State; there is no residential disqualification.

Sir Maneckjee Dadabhoy: That is a negative proposition. I only wanted to know if you could give me any precedent for what you are suggesting.

Mr. Iyengar: I will find it and give it to you for your benefit; I am quite sure there are precedents.

Dr. Ambedkar: A subject of an Indian State can represent a British district at present.

Mr. Iyengar: I am glad you have reminded me of that, Dr. Ambedkar. There is nothing, for instance, to prevent any subject of an Indian State from representing the neighbouring British Districts in the Legislative Assembly or the Council of State. There are to-day very distinguished representatives who have been chosen to represent British India who are subjects of Indian States. I am therefore putting that proposition only for the consideration of Their Highnesses, because I know that the question of the group-

ing of States and the distribution of seats among them will present peculiar difficulties. My friend Sir Mirza to-day made the suggestion that the question of the distribution of seats, both in the Lower and in the Upper Houses, could well be left to an independent and impartial Commission. If that suggestion commends itself to this Committee, I think that Commission should be enabled to examine all the methods of election that could properly be brought into play in respect of representation both in the Lower House and in the Upper House—the various methods of election and also a combination of them whenever it may be necessary.

Then, Sir, I desire to make a few remarks with regard to the other points which have been raised in the course of the discussion. Much was made of the fact that the size of the electorates makes it difficult for us to provide workable constituencies; and in that connection the question of the actual suffrage that now prevails was examined. My friend, Sardar Ujjal Singh, very properly referred to the figures of the election returns in India, and pointed out how huge numbers of electors actually attended the polls and that, as a matter of fact, there has been so far no difficulty in managing these big electorates in India. Speaking from personal experience, I may say that even a constituency of one lakh of voters is not a difficult thing to manage in a country where you have an official organisation which can be set to conduct the elections in a manner which is perhaps not so usual or so easy in a country like England. We have an official hierarchy which is able to undertake the work more easily. In Madras, for instance, where there are multiple constituencies, there have been constituencies which comprise 110,000 electors, where more than 45 per cent. of the electors have gone to the polls, and where the elections have been conducted successfully without any hitch or difficulty; and all the three candidates in these multiple constituencies have been able to go about and conduct their electioneering campaign, no doubt at great expense and trouble, but nevertheless, I submit, successfully. There can therefore be no real difficulty with regard to the size of the electorates.

The example of Ceylon—where adult suffrage was recommended by the Ceylon Reforms Commission, and has now been in operation very successfully, as we find from the publication of the results in the papers—seems to me also to show that this bogey of huge electorates and unmanageable elections is not real; and any arguments based on the ground that the electorates are too large and that the elections would be unmanageable can have no weight with those who have had the actual conduct of elections and the conduct of campaigns in connection with the elections.

One peculiar thing which took place in Ceylon in connection with this adult franchise was that Europeans who were candidates at these elections were elected by electorates which were predominantly Indian, while the European electorate was very small in number. In spite of that, these Europeans came very high in

the list of successful candidates. I mention that to show that, where the interests of the European community are properly put before the electorate, there will be no difficulty in my friends of the European community in India obtaining the support of the Indian electors when they stand for election before Indian constituencies. In the earlier days, when there was no such direct election as we have now, but only indirect elections, Europeans who chose to stand for Indian constituencies, like my late friend Mr. Norton, had no difficulty in getting themselves elected.

The question of the extent to which special electorates should be constituted for the protection of special interests, seems to me, therefore, wholly a question connected with transitional reservations. If our friends of the European community believe that India is to have a genuine federal constitution based upon Dominion Status, and if members of the European community treat India as their home and conform to all the laws of citizenship and civic status and the like to which Indians conform, and if they do not treat India merely as a land for birds of passage, but as a land where they can settle down and live with us as fellow citizens, there is, I submit, absolutely no difficulty in their getting the suffrages of Indians.

I do not desire thereby to say, however, that here and now it may not be necessary for them to secure adequate protection by means of whatever safeguards may be agreed on. That is a question which is connected with the question of transitional safeguards. But, from the point of view of principle, I cannot understand how the representation of special interests as such can have any place in a constitution which is federal, except on the basis that the Upper House represents the state principle and the Lower House the national principle.

The question of qualifications and disqualifications has been referred to, and on that I have only to say that the ordinary principles which are embodied in all constitutions as to qualifications and disqualifications will no doubt operate in our country. I do not find in any of the advanced constitutions of Europe or America that there is any attempt to impose political disqualifications upon candidates. So far as these political disqualifications or any attempt to define them is concerned, I submit that that would be not only unwise but wholly wrong in the present state of affairs. I do feel, My Lord, that, the electorates having been given the right to choose their representatives, it is not right on our part to impose restrictions except such as are necessary to give them notice—such, for instance, as bankruptcy and various other matters of that sort. I do not think it is right that we should seek to impose a disability on those who ask for the suffrages of the people. So long as the electorate with open eyes is prepared to choose a man who may be politically suspect in the eyes of certain people, I think we ought not to impose any disability of that kind, and I do not think it would be tolerated in any modern constitution.

On the question of those who may be nominated or who may be appointed to the Upper Chamber by the Indian States, or who may otherwise be nominated for other purposes, it seems to me that it is not necessary to provide either that the members should be named in virtue of their office or that there should be any clause provided in the constitution with a view to securing the vacation of their seats. I think, My Lord, that when Indian State Governments choose their representatives they will certainly be able to take every care that those whom they send to represent them are made to tender the resignation of their seats the moment the purpose for which they are sent is fulfilled or the moment they cease to represent the mandate with which they are sent. That is the position which democratic electorates are able quite easily to enforce in countries like Great Britain and others; and I think the electorate—or the Prince who sends a man—will certainly find official machinery to compel his resignation if he ceases to represent them. I may also point out, My Lord, that Governments particularly have very effective means of seeing that those who are sent to fulfil particular duties tender their resignations the moment they have performed those duties. Even in regard to the appointment to membership of the Executive Council, to membership of the India Council and to Judgeships, people have sometimes been made to understand that, when called on, they must tender their resignation. There have been many instances in which that kind of condition has been made prior to the appointment; and if that condition is made, it will be honourably fulfilled.

Chairman: Did you include judeships in that observation?

Mr. Iyengar: Yes. In India judges are appointed with the condition that they shall tender their resignation at the end of a certain period.

Sir Provash Chunder Mitter: Judges have to resign at 60, but it is news to many of us here that any other condition in regard to resignation has ever been imposed.

Sir Tej Bahadur Sapru: As a matter of fact there was no such rule up to the year 1921. In the year 1921, the Government of India—for certain reasons into which it is not necessary to go—laid down that, when a judge is appointed to any High Court, he should be made to understand that at the age of 60 he should retire; but I have known instances in which judges have been allowed to continue on the bench even after the age of 60 under the new rules.

Sir Sultan Ahmed: All I would like to say, Lord Chancellor, is this: that when a judge is appointed now, there is a promise taken from him that he will not practise in the same court when he retires or resigns. That is all. That is the only condition.

Mr. Iyengar: I am glad to be corrected by those who ought to know the facts better than I do. I was only citing these cases as instances in which it is perfectly possible for the Government

to enforce what they want; and I know, for instance, that when members are nominated they are nominated on the understanding that, whenever the Government calls upon them, they will always tender their resignation.

Mr. Zafrullah Khan: Officials?

Mr. Iyengar: Officials or non-officials, I understand.

Mr. Joshi: I have been a nominated member for ten years, and no rule has been laid upon me.

Mr. Iyengar: Your Lordship asked us whether, on the question of disqualification, words such as " moral turpitude " would be useful. I submit, My Lord, that in the view that I take of the rights of the electorate, no such restriction is possible, and the words " moral turpitude " seem to me to be as liable to difficulties of interpretation as " political offences " or " offences of a political character ". I would rather, therefore, leave it to the good sense of the electorates to eschew from their representation those who are really obnoxious to the public opinion of the country. After all, it is public opinion that must settle who should be the proper representatives and who should be excluded.

Those are the only observations I have to make.

Chairman: Supposing a gentleman were making a sojourn in the Andaman Islands, would you say he ought to be elected?

Mr. Iyengar: That would come under the question of qualifications.

Mr. Joshi: My Lord Chancellor, The few remarks which I propose to make will be restricted to Head 2, including the sub-heads. I made it quite clear, My Lord Chancellor, when I spoke the other day, that what I am most interested in is the establishment of democracy in India. A mere change in the face of the rulers does not commend itself to me at all. It is from that point of view that I propose to examine the sub-heads of this table.

I feel, Sir, that if democracy is to be established in India the legislative organisation must be fully elected. The organisation must represent the people of the country and when I say the people of the country, I am anxious that all economic classes in the country should be represented in the legislative organisation according to their number. I do not wish to exclude any economic class. The landlords should be represented according to their numbers, the professions may be represented according to their numbers, the other classes should be represented according to their numbers; but I should like all economic classes represented, and their representation should be based upon their numerical strength. The proposals of the Federal Structure sub-Committee assume two Chambers. I am not in favour of a two-Chamber Legislature. I believe that the Second Chamber, if its purpose is to prevent hasty action, is not needed, because that would be provided for in some other way.

Sir Maneckjee Dadabhoy: What other way, please?

Mr. Joshi: Well, you might make a provision that legislation on subjects upon which you do not want hasty legislation should be passed twice during the course of, say, one year or two years, or should not be made effective before it is passed twice by that Chamber. It is not impossible to provide some means for delaying legislation on certain matters if we want legislation to be delayed.

Chairman: Would you have a category of subjects that had to be passed twice, or who would judge whether they ought to be passed twice?

Mr. Joshi: Well, we may make a category of subjects.

My Lord Chancellor, I am quite willing to consider this question of the Second Chamber if I find what provision we are making for effecting changes in our constitution. If I find that no unnecessary impediments are placed in the way of effecting changes in the constitution as a temporary measure, it may be made possible for us to accept even a Second Chamber; but that will depend upon the provision made for changes in the constitution. If the change in the constitution is made wholly dependent upon the vote of the Second Chamber, that change, in my judgment, can never be made. I therefore feel that my final views on that question will depend upon the provision that is made for the changes in the constitution.

As regards the method of election, I hold, Lord Chancellor, that the direct method is always preferable; and I hold that the direct method should be used for both the Chambers. As a matter of fact, even to-day the Council of State is elected on a direct method—not that I approve of the constitution of the Council of State. If all the economic classes are adequately represented in accordance with their numerical strength in the two Chambers, I feel that the direct method is a preferable method. But what concerns me more, Lord Chancellor, is not the method, whether it is direct or indirect. What concerns me more is that all the economic classes in the country should be adequately represented in accordance with their numerical strength. If it is found, after we have considered the question of the franchise, that that adequate representation will not be possible by direct election, I shall certainly have to consider whether there is any method of indirect election, such as the method of electoral colleges, which could be adopted; but to-day I express my preference for the direct method, on the understanding that by direct method all the economic classes will be represented in the Legislature in accordance with their numerical strength.

Chairman: Do you think an electoral collége would assist in the representation of the villages?

Mr. Joshi: Well, I think so. You would have to group them and have an electoral college. It is not impossible to secure the representation of all classes. Although I hold this view, Lord Chancellor, if changes in the constitution have not been made

very difficult I am prepared to consider the question of election of members for the Second Chamber by the Provincial Legislative Councils.

Chairman: Do you mind saying that again; I did not quite follow.

Mr. Joshi: If changes in the constitution are not made very difficult, I shall be quite prepared to reconsider my views as regards the method of election in the Second Chamber.

Now, Sir, this is so far as British India is concerned; and my view with regard to Indian India is the same. I hold that there should be no difference in the method of selecting members of the Legislature whether from British India or Indian India. In my judgment no case has so far been made why a difference should be made. We were told that the conditions were different and that there were different stages of development. Lord Chancellor, I do not feel that there is a great difference in the intellectual development, the social development, or the economic development, in either the Indian States or British India. I therefore feel that the method of selection of members for both Chambers from the States should be the same, and the franchise and the qualifications should also be the same. Lord Chancellor, I feel that Their Highnesses should consider this question from the point of view both of British India and themselves. We greatly appreciate their desire to join the Federation; and, as their representatives are going to sit along with the representatives of British India in the Legislature, which is common to both, without any desire to dictate or to interfere in the internal affairs of the States, in my judgment they should not take up an attitude that their representation in the common Legislature is a matter which must be left to them alone. We are considering the formation of a Legislature, not for Indian India alone, but for the common Federation. It is therefore, the interest of both British India and the Indian States to see what kind of Legislature is being established. We are, therefore, equally interested as the Princes themselves are in coming to a right decision on that point. It is not an interference in their internal affairs at all, but it is an interference, and a definite interference, in a matter which the Princes themselves have with great fairness conceded. They have agreed to join a Federation; they have agreed that the decisions on certain matters should be joint and not by the Princes alone. To that extent they have made interference legitimate; and I feel, Sir, that the method of selection of the representatives of the States in the common Legislature is not a matter which the Princes should claim to be their concern alone—it is a common concern. Let us therefore decide here that the legislative organisation should be representative of the people, and—and I say this more emphatically—may be called the Popular Chamber. The Popular Chamber must represent the people. I feel, Lord Chancellor, that the principle that that Chamber should be an elected body should be laid down by this Conference. I was very

glad yesterday to hear from His Highness The Maharaja of Bikaner and from His Highness The Nawab of Bhopal that they propose to leave the selection to their Legislatures.

Sir Sultan Ahmed: No, to give the Legislature some voice in the matter.

Mr. Joshi: To give them some voice. Well, Sir, I was quite glad that they made that declaration; but at the same time that is not enough, that one or two or three Rulers should declare here that they will give them a voice. From my experience of what that voice is, I am not very sanguine. I can tell you, Lord Chancellor, a little of my experience. When His Highness The Maharaja says that he will give a voice to his Legislature . . . .

Chairman: You want a loud speaker?

Mr. Joshi: I think there should be a panel of men to be chosen either by himself or by his Assembly, out of which the selection should be made. Lord Chancellor, such panels are used in our present Legislature for electing what are called Standing Committees for different Departments, I know by experience that when a Department wants certain persons on that Committee they make the panel a very large one.

H.H. The Maharaja of Bikaner: Lord Chancellor, May I say I never mentioned the word " panel ". I hope I made it clear: we will go into that question. In what way my Legislature will be consulted, and have a voice in the matter, is a point on which we have nothing thought out at present.

Mr. Joshi: I made that guess because my conjecture is that that may be one of the methods. What happens is that the Department asks for a large panel, with the result that those people who have been selected get into the panel; and when they get into the panel, they are nominated. I have absolutely no hesitation in stating that it was sometimes considered that I should be on some of them; and, in the Legislative Assembly, I have no hesitation and no shame in stating that I have no chance of election, though a panel could easily be made up including my name and I could be on those Committees. Therefore I feel that there should be a full election for the members of the Legislature even from the States; and we shall not be satisfied merely with a voice in the election or even with an election of a different kind.

Now, Sir, I will make one remark about what are called the special qualifications for the members of the Upper Chamber. It is said that the Upper Chamber should represent experience, weight and character. Lord Chancellor, I do not know how we are going to frame any rules by which the selection of such people could be governed. It is said that the holding of property should be one of the qualifications. May I ask whether you can guarantee the possession of experience, the possession of weight, or the possession of character, by making people holding certain property eligible for election to the Upper House? I therefore feel that it will not be of any fruitful effect if we try to lay down qualifications

of this kind. If any qualifications at all are to be laid down, those qualifications must be such as will be ordinarily possessed by all economic classes. If distinguished service in public administration is going to be one of the qualifications, it is quite possible that people who are poor will be unlikely to possess that qualification; but it is quite possible to frame a qualification which they may possess. I would suggest that long membership of a trade union or work for a trade union may be regarded in that connection as distinguished service.

My own feeling is, however, that it is not easy to lay down a qualification which will be available for all economic classes, so that no one economic class will be predominant in the Upper Chamber. I am not therefore in favour of laying down a qualification of this kind. The only qualification, it seems to me, which could be laid down, and which would be common to all economic classes, is the qualification of age. If you want experience you can always impose a minimum age limit of 40, 45 or 50—though that may be too high. At any rate, we can always find some age limit below which a man could not be a member of the Upper Chamber. That is a qualification which is available for all, and which may show the possession of experience.

There are only one or two other small points to which I wish briefly to refer here. It has been suggested that imprisonment should be regarded as a disqualification, and it was also suggested that only imprisonment for an offence which shows moral turpitude should be made a disqualification. In my judgment it is not easy to say which offences involve moral turpitude. In the first place, it was said that political offences are offences which do not show moral turpitude. I do not know whether you would consider that picketing in a strike is a political offence. It may be a political offence or it may not. It may not be a political offence, but at the same time I do not think it shows any moral turpitude. I will go further: there may be cases where even theft may not show moral turpitude, in certain circumstances.

Mr. Sastri: For instance, a hungry man stealing an apple.

Mr. Joshi: That does not show any moral turpitude. I therefore feel it is wrong to make any distinction of this kind. Personally, I hold that, when a man has undergone imprisonment for a certain period, he has cleared himself of his offence and should be made eligible for election. You should leave it to the voters; you should have no right to put such a limitation on the voters.

The second point concerns nominated members. I have no objection to certain members being nominated to represent those Departments which may be reserved to the Crown; but at the same time I am not in favour of giving them the right to vote. Unlike Sir Tej Bahadur Sapru, I feel that even a bloc of ten may be able to exercise a very great influence and balancing power in a Legislature of three hundred members. I would therefore suggest that, although there may be a few nominated members, they should have no power to vote.

These are the only remarks, Lord Chancellor, which I wish to make.

Sir Maneckjee Dadabhoy: My Lord, I propose to make a few observations with regard to some of the points which have been already fully discussed, particularly as I feel that the future success of the new constitution will depend on the manner in which that constitution has been framed, and also on the manner in which various interests have been represented and safeguarded. My task has been made easier and less onerous by the exhaustive speech of my friend Sir Tej Bahadur Sapru; but there are certain points which I shall take the liberty of pressing on the attention of this Committee.

I do not wish to take up the time of this Committee by making any further comments on the representation of individual States and groups of States. This question, to my mind, has been fully and fairly discussed already; and after the observations which have fallen from His Highness The Maharaja of Bikaner, and also from two eminent representatives of two important Indian States, Hyderabad and Mysore, I think it is superfluous to go into this question at any length. The matter solely affects the Princes, and it would be hardly fair to state that the Princes are not going to look after their own interests and the interests of their subjects. They have decided to come into this Conference willingly and of their own accord. They have reserved to themselves the liberty of framing their own rules and regulations. It is on that condition that they have agreed to come here, and I do not think it is right for any of us to insist on the imposition of any conditions on the Princes, because, in the first place, we are not familiar with the internal economy of their administrations; secondly, we are not fully acquainted with the class of people inhabiting the various States; and lastly, because we have no knowledge or experience of the manner in which even their own Councils have worked during the last few years, apart from the assurances which we have received from them and the reports which we have read in the newspapers.

I shall dismiss the subject, therefore, with one observation. We know that our friends the Princes will do their best to make that representation sufficiently adequate and sufficiently representative and important, and they themselves will feel the responsibility of their task; and I have not the slightest doubt that their ultimate decision will be one with which we shall have no complaint whatever.

My Lord, the few observations which I now propose to make will be particularly with reference to the Council of State or the Upper House, regarding which we have heard so many interesting and instructive observations since yesterday. It was with some sorrow that I heard my friend, Mr. Joshi, standing out of the abolition of the Council of State or Upper House. I am not aware, Sir—now that we are about to frame a federal constitution, for which purpose we are sitting here—of any single federal constitu-

tion in which a senate does not exist, and I should like to be enlightened on that point by my friend Mr. Joshi. Even assuming, for the sake of argument, that there may be a constitution without a senate, in the particular case of India it would be absolutely impossible to dispense with the Upper House. We have to go by the exigencies of each country and the requirements of each country; and that matter was so fully expressed in the Report of the Federal Structure sub-Committee that I am tempted to quote a passage from it at page 21:

> "India's own practical needs and conditions must be the governing factor, and no constitution, however theoretically perfect, and however closely modelled upon precedents adopted elsewhere, is likely to survive the tests of experience unless it conforms to the needs and genius of the country which adopts it . . . . "

Here, with my knowledge, and, I may assert, with my experience in the Upper Chamber—for I have now been for eleven years a member of the Upper Chamber in India, and I am still a sitting member of that Chamber—I shall speak with emphasis, and say that the proceedings of the Indian Legislature afford, if any proof is needed, ample evidence of the service which the Upper Chamber has rendered to India, and of the manner in which that Upper Chamber has, during the last ten years—during the period of the Montagu-Chelmsford Reforms—saved India from certain disastrous catastrophes. I could quote chapter and verse if it were necessary; but many of my friends here are perfectly conversant with the legislative history of the Government of India for the last twelve years.

Sir, the decision at which this Federal Structure sub-Committee has arrived is—and I see from the Report that it was a unanimous decision—that the British Indian members of the Senate should be elected by the Provincial Legislatures by the single transferable vote. This decision, of course, is in consonance with the finding of the Simon Commission that, if no Second Chambers are created, the members of the Council of State might be elected by the members of the Provincial Councils, the same method of proportional representation being employed. My Lord, we have heard in the course of the last two days how the method of direct election is liked and loved by the people of India. We have heard from many members, in the course of the last two days, of the popularity, as a rule, of direct election. This Committee is now going to make a very extensive departure from that line; and I do not see any consistency in argument or any cogency if direct elections, which are so necessary and indispensable in the case of the representative Lower House, should be dispensed with in the case of the Upper Chamber. At any rate, this decision which has been arrived at I do not now propose to go against. The case, however, must be carefully considered; and the case which I propose to place before you I can best explain and elucidate to you by a reference to paragraph 8 of the Reforms Office Despatch No. 3, dated 6th May, 1920. This Despatch, My Lord, has been quoted at page

129 of the Government of India Despatch on the proposals for constitutional reform. Speaking about the Upper Chamber, the following observations were made by Lord Chelmsford's Government:—

> "The functions of such a chamber, as we conceive them, are those of a revising body, capable of exercising in relation to the popular Chamber a restraining though not an overriding influence, and its composition is a corollary of its functions. The members of such a body must be persons possessing what has been called the senatorial character; they must, that is to say, be men who will bring to bear, no problems of State, the qualities of knowledge, experience of the world, and the sobriety of government which comes thereby."

And, My Lord Chancellor, you will pray mark the following most pregnant sentence:—

> "No form of indirect election could satisfy these requirements. At its best, this method would produce a body which merely reflected the views of popular electorates; at its worst, one which consisted of the delegates of small electoral cliques; but in no circumstances could it yield a true senate."

My Lord, these are very significant words. They hold good to-day as they held good in 1920. Even the Government of India, in their Despatch on the subject, distinctly stated and expressed their preference for maintaining the present system. The Government of India, in their Despatch, stated that, if the present system of direct electorates is to be altered for an indirect electorate, they would agree only on two important conditions—provided those two conditions have been fulfilled. I will read it:—

> "We would, however, make our acceptance of change in the existing method of election conditional upon two objects being attained. We should wish to be satisfied that the change involved no prejudice to the rights of minorities. Our second proviso would be that the change commended itself to public opinion. Subject to these two considerations, we should be prepared to accept the proposals of the Statutory Commission."

My Lord, I am not quite certain that these changes are not going to prejudice the minorities. My Lord, I am not yet quite satisfied whether these changes have been accepted generally by public opinion.

My Lord, that was the view of the Government of India. Perhaps I may take up another minute on the opinion of the Indian Central Committee on this subject. The Indian Central Committee, in paragraph 131 of their Report, gave expression to the following opinion:—

> "With the exception of an increase in its numbers, we propose to make no change in the constitution of the Council of State."

Then they say:—

> " We also recommend that the present proportion between the elected and nominated seats should be maintained. The retention of the Council of State, composed on these lines and possessing all its existing powers, might appear somewhat incongruous with the revised constitution we have proposed for the Government of India; but while on the one hand it is unlikely that the use of the special and somewhat drastic powers of the Council will be invoked by a responsible Government of India, on the other hand, the existence of these powers might prove a valuable safeguard in contingencies which cannot at present be foreseen. We are conscious of the magnitude of the changes we have recommended and the serious consequences which a breakdown of the new arrangements might entail. We therefore feel no hesitation in recommending a retention of powers equally drastic to deal with such eventualities."

This much for my friend Mr. Joshi.

(The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.)

Sir Maneckjee Dadabhoy: I have already shown the indispensability of the Upper Chamber to give the Executive a reasonable, judicious and discriminating support when necessary. Its existence is also indispensable to prevent the breakdown of the administrative machinery of government and also to prevent deadlocks in the administration of government. In view of the decision which has been arrived at for the Upper Chamber to be constituted by an indirect form of election, I am prepared to give my provisional consent to this proposal; but I do so on the distinct understanding that the nominated element will subsist and continue to exist as at present. I insist that the numbers and proportions between the elected and non-elected members should be left unchanged, and that the Upper Chamber should retain all its present powers, if indeed it is not given any additional powers—a matter to which I shall refer later on when we are discussing Head 3, the relations between the two Chambers. But I must express my gratitude in this connection to Sir Tej Bahadur Sapru, who has had practical experience of the working of the Montagu-Chelmsford Reforms; and I am very pleased to have heard from him that, if the Upper Chamber is an elected House, it has a general tendency to usurp powers on financial matters. Sir Tej Bahadur Sapru frankly went to the extent of stating that you cannot in fairness deny to the Upper House a very substantial voice in matters of a financial character when that House also is an elected House. I do not think it makes any difference whether the House is elected by direct election or whether it is an elected House by indirect election.

Sir Tej Bahadur Sapru: I did not follow you there.

Sir Maneckjee Dadabhoy: In my opinion, whether it is a nominated House, whether the election is by direct vote or by indirect vote, it makes no difference. I shall certainly insist on higher privileges and concurrent powers for the Upper House when we are discussing Head 3; but at present I shall content myself with saying that, while I give this provisional sanction with some measure of reluctance, yet I hope we shall be able to frame a constitution on these lines which will be acceptable. But, My Lord, in studying your Federal Structure sub-Committee's Report, and in reading that small paragraph which refers to the method of election to the Upper Chamber, I see that it was unanimously decided that the Provincial Councils should have full power to elect members for the Senate. But it is not clear to my mind what was the real intention of the Federal Structure sub-Committee—whether this power which is given to Provincial Councils will be confined to the election of members only of that body, or whether that power will be exercisable in the case of outsiders. And I think it is essentially necessary that, even if we go in for large electorates, we should extend the operation of that power and that privilege to the local councils, and not confine it to the members of the Council alone, but give them a greater latitude to elect anybody from outside in their Province; and I submit that that will be in consonance with justice and good government. I therefore give my consent to indirect election on the distinct understanding that this condition will be scrupulously observed, and I have a very substantial reason for insisting on this condition. I know—and many of my countrymen who are experienced in Indian parliamentary life know—that there are many respectable people in all parts of India who do not like to humiliate themselves and go and beg for votes at an election. There are very many respectable people in India who—to use the language of the All Parties Conference, commonly known as the Nehru Report—do not like shouting and tub-thumping for their votes; and I say that it is for this reason that it is essentially necessary that we should endeavour—and it is in the interests of India that we should endeavour—to get that class of good, quiet, sedate, sober citizens in our Councils, who can take a quiet and rational view of things, and who are not carried away by the bustle and noise of everyday politics in India.

My Lord, I shall next venture to offer a few observations on the much-hated question of the official bloc. It is a question which, I know, has excited a great deal of rancorous and acrimonious discussion in many places. It has been, for the last eleven years, the one theme of talk; and when any measure, supposed to be considered as a popular measure, was brought in the Assembly and passed there, but vetoed by the Council of State, it was said that the Council of State rejected that by the influence and support of the official bloc. My Lord, I venture to speak on this subject with some measure of diffidence; yet I am firm in my conviction that, in view of the new and great experiment which

we are about to make in the form of a Federal Government, it is essentially necessary and indispensable that this official bloc should continue to exist during the transitional period, or at least for a certain number of years. My Lord, my past experience of the Legislative Council makes me absolutely nervous to reflect that this power might be taken away or dispensed with. My learned friend, Sir Tej Bahadur Sapru, to whose views I always attach great importance, yesterday told us, in defining what is meant by "official bloc," that the official bloc means that that bloc is to carry out the mandate of Government, and is a mechanical voting machine. He did not use those words, "mechanical voting machine," but I use those words. My Lord, there may be some truth in this description, and I am frank to confess it; but at the same time I do not think that that is an altogether correct description. In my own experience I have noticed on many occasions the Leader of the Assembly has informed the Assembly, before a vote has been taken on some important question, that the Government will vote, leaving the official bloc to exercise their discretion in the matter.

Mr. Jayakar : It is very rare.

Sir Muhammad Shafi: Sometimes in the Council of State.

Sir Maneckjee Dadabhoy : The Assembly also: I can give illustrations in the Assembly. It has happened; and it is not always true, therefore, that because the members of the Government, as a constitutional Cabinet, have to vote in obedience to the decision passed at the Cabinet meeting in the presence of the Viceroy—it does not necessarily follow, I say, that that official bloc must and should always be employed for carrying out the mandate of the Government. On several occasions absolute liberty was given to members in the Council of State, to which I can bear testimony; and I know from my own personal watching of events in the Assembly, of which I have been a close student for many years, that the same privilege has been extended to them on several occasions.

Mr. Iyengar : On official measures or non-official measures?

Sir Maneckjee Dadabhoy : On official measures.

Sir Tej Bahadur Sapru : Can you give any instance of that during the last eleven years? I know of one instance of a non-official character in which a member of the Government voted in that way.

Sir Maneckjee Dadabhoy : Of a non-official character there have been several.

Mr. Iyengar : If you can give me one instance of an official character I shall be obliged.

Sir Maneckjee Dadabhoy : Yes, perhaps I will give you one.

Sir Tej Bahadur Sapru : Not official.

Sir Muhammad Shafi : My Lord Chancellor, I was Leader of the Council of State during a period of three and a half years,

to the best of my recollection. I cannot recall a single occasion on which, in regard to an official measure, the official members of the Council of State were allowed freedom to vote as they liked.

Sir Maneckjee Dadabhoy : There must be somebody always to support and represent the Crown subjects. We are going to have reserved subjects like the Army, foreign relations, external relations and probably other matters; and I am going to plead for a similar reservation in respect of another important subject at a later stage of our debates. These subjects require some people always to represent not only the point of view of Government but to elucidate the matter—to throw light upon it, not only from an official standpoint, but also from the standpoint of experience which the official members of both bodies generally possess. It is, therefore, essentially necessary that some official bloc should remain in existence. As to the numerical strength of that bloc there may be a difference of opinion; but, as far as the Council of State and the proposed Upper House are concerned, My Lord, I insist that the present official bloc of twenty should continue to exist for the safety of India, for the better government of India, and for the success of the new constitution. I think that is necessary.

Chairman : Would you have twenty irrespective of what the total number was?

Sir Maneckjee Dadabhoy : No, Sir; I am assuming the existing numerical strength of the Upper Chamber, which is sixty.

Chairman : You want thirty-three and a third per cent.?

Sir Maneckjee Dadabhoy : If it is increased to one hundred or one hundred and fifty it should be in that proportion.

Sir Muhammad Shafi : May I ask my learned friend to inform the Committee—if the strength of the Upper House be enlarged to one hundred and fifty, where will the Government of India get fifty officials of the requisite standing and experience?

Sir Maneckjee Dadabhoy : If you cannot get officials, you can supplement it with non-official members.

Sir Tej Bahadur Sapru : Would you then call it the official bloc?

Sir Maneckjee Dadabhoy : No, not then; you would not call it the official bloc.

Sir Tej Bahadur Sapru : May I ask your opinion on one point? Assuming there is a popular Ministry at the Centre, to whom would you give the right of nomination?

Sir Maneckjee Dadabhoy: I would give it to the Cabinet as a whole.

Sir Tej Bahadur Sapru : And do you expect the Cabinet will select any persons other than those belonging to their own point of view?

Sir Maneckjee Dadabhoy : Well, if they do not select, they will be enemies of their country.

Then, Sir, as regards the representation of special interests, I am equally keen on that subject. I heard this morning, with some amount of disappointment, the expressions of opinion of my friend, Mr. Rangaswami Iyengar. He spoke to this Conference about Europeans who had been for twenty-five or thirty years in the country but had made India only a land of passage, as he said. He said: Why should they have special representation?

Mr. Iyengar : I did not say that.

Sir Maneckjee Dadabhoy : I understood you to say that. I have got a note that you said that it would all come into the general representation.

Mr. Iyengar : Yes, I wanted that.

Sir Maneckjee Dadabhoy : But that is not a feasible proposition at present.

Mr. Iyengar: That is a different thing.

Sir Maneckjee Dadabhoy: It is not feasible at present. Then you ask for this to be done. Now, My Lord, if twenty-five or thirty years' stay in India will not give a man a right to participate in the deliberations of its Legislature, I wonder what will be necessary to confer such a right. I have been speaking of Europeans, but let me say that I shall be referring presently to other classes. I am not holding a brief in any way for Europeans in the country; but I say there are Europeans who have come to India, made their home in India for years together, for a quarter of a century—some families have a traditional connection with India and members of those families come to India and stay there for many years—if you do not allow their own special interests to be specially represented, who is going to represent them? What has been our past experience in this matter, may I enquire? Can any member of the Assembly or can anyone here who is connected with the Assembly give me an instance during the last eleven years in which any Indian member has fought the cause of Europeans in the Assembly or in the Council of State? I say no to that. How are these people to be represented? Who will put their case before the Council or the Assembly? It is only right, it is only fair, just and equitable, that this measure of representation should be given, and that a special constituency should be constituted for the purpose. If we want to be just to ourselves we ought to be just to our neighbours; and it is essentially necessary that in matters of this kind equality of privileges should be given. I go further, Sir. My friend, Sir Tej Bahadur Sapru, suggested that we should have special constituencies in regard to Commerce, Europeans and the Depressed Classes.

Sir Tej Bahadur Sapru : And Labour.

Sir Maneckjee Dadabhoy : Yes, and Labour. I understand it is suggested that there should be special constituencies selected;

but it is not always possible to get representation by special constituencies, and therefore in some cases you would have to fall back on nomination with regard to special interests. Sir, as regards the Depressed Classes, subject to what I hear from my friend Dr. Ambedkar, I must state that their case is entitled to our special consideration. Perhaps it is not known that it was I who, twenty years ago, started the ball rolling by moving in the late Supreme Council a resolution inviting Government to give larger privileges to the Depressed Classes, to admit them more freely and extensively in Government services, to confer upon them other and special privileges and to uplift them from their depressed position. I well remember that occasion. I caused an uproar in the Supreme Council; almost every Hindu opposed me, and, if my memory is correct, I had a shower of rebuke even from my friend Pandit Malaviya. The Depressed Classes are numerically very strong, but they are scattered all over India and I am unable to see what method can be devised for the formation of constituencies for them. If it is possible to form constituencies for them, I shall be glad; but at the same time I think they should be largely represented in both the Houses by nomination, wherever it is not possible to go in for proper and well represented constituencies.

Perhaps you will now permit me to say a word or two on the question of qualifications. With regard to the qualifications of a candidate, I pray that the present catalogue of qualifications may be left undisturbed. I suggest that the qualifications which exist at present were framed after careful study and mature consideration. I am a great believer in the property qualification, despite what has been said against it. I am glad that my friend, Sir Tej Bahadur Sapru, is not altogether opposed to it. He says he does not think it should be a necessary qualification; but, in my opinion, at any rate so far as the Council of State is concerned, if you want to get the right class of people in the Upper House the property qualification is absolutely essential.

Chairman: I want to follow that if I may. You are not saying that property should be *a* qualification, but that it should be a *necessary* qualification?

Sir Maneckjee Dadabhoy: Yes. At present payers of Income-tax on a certain income—I understand it is Rs. 25,000—are allowed to stand as candidates. Landlords—the big zemindars who own larger estates—are allowed to stand as candidates. I may say in passing that we know that some of those landlords have thrown great lustre on and have served with great credit on the Council of State. I consider that it is desirable to obtain the services of people who have a stake in the country. We do not want our councils to be full of briefless barristers, of unoccupied journalists, or of other classes who have no interest in the country. And, so far as India is concerned, if the new Constitution is to be made a success, my submission is that we want in our councils people who have an interest in the country and a substantial stake in it.

Chairman: Perhaps you will help me in regard to this. Suppose a man had been Prime Minister of India for many years and had done great public service, but was a poor man, would you say he would not be eligible?

Sir Maneckjee Dadabhoy : He would certainly be eligible; that is a rule which we have even to-day. Not only that, but presidents of local boards and other bodies are allowed to stand as candidates; it is considered a qualification.

Chairman : I only asked you because I thought you said it was to be a necessary qualification.

Sir Maneckjee Dadabhoy : Perhaps I may be allowed to correct myself there.

Sir Tej Bahadur Sapru : Would you allow a poor man to become Prime Minister in India?

Sir Maneckjee Dadabhoy : Certainly.

Sir Tej Bahadur Sapru : How would he get in in the first place?

Sir Maneckjee Dadabhoy : He could get into the Assembly. Prime Ministers generally come in all countries from the House of Representatives and not from the Upper House.

Then, as regards disqualifications, I should like to say in the first place that whatever rules may be framed in the matter of disqualifications should apply equally to British India and to the Indian States. There should be no distinction between them in this matter.

With regard to age, I am quite in agreement with my friend, Sir Tej Bahadur Sapru, in thinking that we should keep the age limit at 30 for the Upper House; and in fact I should be glad if it were found possible to raise it to 35 or even to 40. We want men of ripe knowledge and experience and with worldly training and ripe judgment to sit in the Upper House, so that they may bring lustre to their country and glory to themselves.

As regards political disqualifications, I feel very strongly on that subject; and I think that the rule regarding political disqualifications should be observed with unbending and unrelenting severity. I think it is essential. The events which have taken place in India during the last twelve months—deplorable events which have upset the good government of the country, and when we have found young men from good families committing political dacoities and other serious offences—are they not a justification, and an absolute justification, for such disqualification? It is difficult to define what a political disqualification is. I would certainly leave alone offences or convictions connected with passive disobedience. I would leave picketing alone, and I would leave boycotting unaccompanied by violence alone. These trespasses I would leave alone; but in the case of all offences, not only in which moral turpitude is involved, but which are of a criminal nature or character, I think the perpetrators of such offences should be prevented for all times from coming into our Legislative Councils.

There is another suggestion which has not been referred to and to which I may be permitted to refer. I also think that continuous absence during the whole session in the case of an elected member should be a disqualification necessitating compulsory resignation.

Sir Tej Bahadur Sapru : What about a nominated member?

Sir Maneckjee Dadabhoy : I will come to that. I know of cases where, for a whole session, members have absented themselves from the Assembly and from the Council; and I think it is only right that a rule to this effect should be framed. My friend, Sir Tej Bahadur Sapru, with his shrewdness, has asked me what is to be done in the case of the nominated members. My Lord, in the case of an election a man is sent to the Assembly or the Council of State by a large number of representatives or voters. He cannot go and ask for permission from every one of those voters to stay away. He cannot ask permission from them to abstain from his work in the present state of unorganised parties representing the interests of various constituencies; but in the case of a nominated member, if he absents himself without the sanction of Government in the first instance, he will not be re-nominated.

Mr. Iyengar : That is his constituency.

Sir Maneckjee Dadabhoy : And in the case of a nominated member, if a man has any sense of decency and honour he will at once write and obtain the permission of Government if he is unable to be present. But the same power it is impossible to exercise in the case of an elected member, and I therefore think it is essentially necessary that a continuous abstention during an entire session should be a good, sound and valid ground for disqualification.

Sir, I do not wish to occupy the time of this Conference by a further discussion of some of the matters to which I would like to refer. I know I shall have several other opportunities of placing my views before the Conference, and I shall therefore conclude by thanking Your Lordship for the indulgence you have extended to me in allowing me to express my views at considerable length.

Dr. Ambedkar : My Lord Chancellor, I am speaking for the first time as a member of the Federal Structure Committee. Every new member, in availing himself of the very kind opportunity that you gave him for making a general statement of his position with regard to the problems which this Committee will have to face, has given expression to his sense of appreciation of the great services which you, Sir, have rendered to this Committee; and he has also added a proviso making it plain that the safety of his own community, or of the interests he represented, was a condition precedent to any consent that he might give to the establishment of responsibility in the Central Government. Lord Chancellor, if I do not follow my predecessors in this, it is not because I have no feelings to express on the matter. On the contrary, my feelings

are very deep; and if I do not give expression to them it is because I prefer to obey the mandate that you gave us this morning, that all these matters shall be taken as understood.

With these few preliminary remarks I propose to submit my views on the various sub-heads included under Head No. 2. In doing so I do not wish to follow the order of the sub-heads as they are given in the Memorandum which has been circulated to us, nor do I propose to express my views on every item that has been included in that Memorandum. I will only touch upon the topics on which I think I have a definite opinion to express and a definite contribution to make.

The first thing that I propose to deal with is the subject of the composition of the Federal Legislature; and before I proceed with that subject let me make my position clear with respect to the question as to whether the Federal Legislature of future India shall be unicameral or bicameral. Now, I confess at the very outset that I have never been a believer in a bicameral system. I have never accepted that the Second Chamber has any utility at all; but I also agree that, although I have that conviction in me, there are many others who do not accept that position, and I know that in this Conference it will not be possible for us to convince them that a Second Chamber is not necessary. Secondly, I also feel that, if the relations of the two Chambers are properly regulated—and there are ways by which the fangs of a Second Chamber could be clipped by proper safeguards so that it could be made safe for a democratic government in India—I do not wish to raise any objection to a bicameral system being introduced in India.

Having said that, let me turn to the question of the representation of the British Indian Provinces in the Federal Legislature of India. In doing that, the first question with which we are concerned and confronted is whether the representation shall be direct or whether the representation shall be indirect. It seems to me that, so far as the Lower Chamber of the Federal Assembly is concerned, there can be no two opinions. It must be constituted by direct election. I am quite conscious of the fact that the Simon Commission, in dealing with this question, recommended that the Lower Chamber, instead of being constituted by direct election, should be constituted by indirect election; and in support of that they observed that, as a matter of fact, there was no distinction between direct election and indirect election, and that indirect election was only direct election one step removed. Now, logically, perhaps, that position is correct; but I submit that psychologically there is a great difference between direct election and indirect election. In my opinion, what is of the utmost importance is that the people of India should be impregnated with the sense that, in the last resort, they are responsible for the good government of the country. And I venture to suggest that, unless the Indian citizen is made to feel that it is he who can make or unmake the government, we shall never be able to succeed in establishing the true foundations of a responsible government in

India. Now, if my suggestion is correct, then it follows that we must have some system of election whereby a direct contact will be established between the government and the citizens of the country; and therefore I submit that the blind of an indirect election between the Central Government and the citizens must be removed, and they must be allowed to see the effect of their vote upon the government of the country and upon their welfare. I can, under no circumstances, consent to a system which will not provide for direct election to the Lower Chamber of the Federal Assembly.

Coming to the constitution of the Upper Chamber, I approve of the method suggested by the Federal Structure sub-Committee —namely, that it should be constituted by the method of indirect election in which the Provincial Legislative Councils will form the constituencies. I approve of the system because the election, instead of being carried out by the watertight methods of separate or communal electorates, will be carried out on the basis of proportional representation. Now, I think it is a great advantage in a country like India, where, unfortunately, owing to various circumstances, we cannot avoid the separate representation of distinct communities—where we cannot ignore safeguarding the interests of various groups—to have in the constitution a Chamber which will be non-communal, a Chamber the members of which will have a mandate which will not be drawn exclusively from one particular community, but a mandate which will be broad-based. There is only one comment, however, that I would like to make on this proposal. I have no objection to—indeed, as I have stated, I approve of—the system of proportional representation; but there is one point which I think ought to be mentioned. All members of the Committee are aware that the minorities in India are not only anxious to have their interests and their communities represented in the various legislatures, but they are also insistent upon the fact that they shall get a certain minimum quantum of representation. Now, my fear is that, although proportional representation may give them some representation in the Upper Chamber, we do not know—for we can never be certain of the results of proportional representation—we do not know that the various communities will succeed in getting the quantum of representation which they want. I would therefore like to suggest that, to this recommendation of the Federal Structure sub-Committee, a proviso something on the lines of Article 35 of the Austrian Constitution should be added. That proviso, of course, does not speak of the representation of the communities; it speaks of the representation of political parties. But it can be easily made applicable to the representation of the communities. This is how the proviso reads:—

> "The members of the Federal Council and their substitutes shall be elected by the Provincial Diets for the duration of their own legislative period according to the principles of proportional representation; but at least one seat must fall to the Party having the second highest number

of seats in the Provincial Diet or (if several Parties have an equal number of seats) the second highest number of votes at the last election to the Provincial Diet. When the claims of several parties are equal, the matter shall be decided by lot."

I do not say that this could be taken bodily and adopted in the Indian Constitution; but that the principle enunciated there, that along with the institution of proportional representation there shall be a proviso which will guarantee a quantum of representation, may be adopted in the constitution.

Now, this is all I have to say so far as the representation of the Provinces of British India in the Federal Legislature is concerned. I come now to the other part of the subject, namely, the representation of the Native States in the Federal Legislature. This subject raises two issues for consideration. One is whether each and every State shall be represented individually or whether they shall be grouped for the purposes of representation; and the second issue which arises out of it is how they shall be represented, whether by election or by nomination.

I take issue No. I. The Federal Structure sub-Committee has recommended that this is a matter that can be left to the States themselves. With all respect to the sub-Committee, I beg to differ from their position. I do not think at all that it is a matter for the States to decide. My view is it is a matter for the Federal Structure Committee to decide as to which units shall be recognised as units of the Federal Constitution which we are making. Just see what would be the result of leaving the whole thing to the Native States themselves. First of all I will assume that each State is represented in the Indian Federation. If that happens, my submission is that the Federation which we will have in India will be a mammoth Federation. Let us look at this comparatively. In the German Empire there were only 25 units of the Federal State; in Australia we have only 5; in Austria 8; in Canada 4; in Switzerland 22; in the United States, the largest Federal State, 48. In India, on the assumption I am making that every State is to be represented, we shall have a Federation which will have something like 570 units. Assume, on the other hand, that all the States are not represented in this Federation which we are contemplating and that only some States are to be represented; then the question which arises is, what is going to happen to the ideal which we have set before ourselves that in the new constitution which we are going to have every inch of Indian area should be represented? What is going to happen to the States that are going to be left out in the cold? That is a problem which we shall have to consider.

But, My Lord Chancellor, I have raised this question, not because I am alarmed at the number of States that are going to be the units of the Indian Federation. The thing that disturbs me is this: are we going to recognise every Indian State as an

independent unit of the future Federation of India, irrespective of the question whether the units so recognised are capable of bearing the burdens of modern civilisation; or are we going to admit into our Federation units which are going to be units of the utmost lowest possible vitality? I am sure that, when we are discussing this question of the Indian States, we are not quite aware of the multiplicity and variety of the circumstances which will be found in the different States; and, with your permission, My Lord Chancellor, I propose to read a small passage which gives a description of the existing Indian States. I am reading from a book called "The States and Their People in the Indian Constitution," by D. V. Gundappa. Now this is really the position. He gives a table with which I do not wish to trouble the Committee; I will read his comment:

> "From the foregoing tables, it will be seen that as many as 454 States have an area of less than 1,000 square miles; that 452 States have less than 1,00,000 population; and that 374 States have a revenue of less than Rs. 1 lakh. British India, with an area of 10,94,300 square miles and a population of nearly 222 millions, is divided into 273 Districts. The average area of a British Indian District is therefore 4,000 square miles and its average population about 8,00,000. If the suggestion were made that each District in British India should be constituted into a State, how ridiculous would it be considered? Yet it is only some 30, among the 562 States, that possess the area, population and resources of an average British Indian District. Some of the States are so absurdly small that no one can help pitying them for the unfortunate dignity imposed upon them. As many as 15 States have territories which in no case reach a square mile; while 27 others possess just 1 square mile. Fourteen States exist in Surat district, not one of which, according to the list of 1925, realised a revenue of more than Rs. 3,000 in the previous financial year. Three of these States could not boast of a population of 100 souls, and 5 of a revenue of Rs. 100."

The smallest revenue mentioned is Rs. 20 for the year.

H.H. The Maharaja of Bikaner: May I say that bears out what I said yesterday—that there is a confusion of thought in talking of these units of Indian States' territory as States or sovereign States.

Dr. Ambedkar : No. There is none.

H.H. The Maharaja of Bikaner: And I am afraid that even this author from an Indian State, about whom Sir Mirza will be able to say more, has fallen into the same error.

Dr. Ambedkar : May be. With all respect to His Highness The Maharaja of Bikaner, I will ask this question: if he has a special definition of what a State is, and if he is going to follow

that definition in the matter of admission of States into the Indian Federation, we should like to know what is going to happen to those who are excluded by the definition he has in mind.

H.H. The Maharaja of Bikaner: I think all that will be dealt with in due course later.

Dr. Ambedkar : This Federal Structure Committee cannot blindly give to the States what they want.

H.H. The Maharaja of Bikaner: Nor can the States: we cannot sign a blank cheque either. We have to appreciate each other's difficulties.

Chairman : Dr. Ambedkar, perhaps you will help me with regard to that. You read a most interesting extract, which I followed with very great care; but I should like to ask you what are the conclusions that you draw from that extract.

Dr. Ambedkar : What I say is this—that this is a most critical occasion. I say so for this reason—that once you accept the proposition that every State, whatever the attributes of the State may be, is entitled to become a member of the Indian Federation, then you give that State an independent right of existence for ever.

H.H. The Maharaja of Bikaner: It has that right now.

Dr. Ambedkar: That is so by the kindness of the British Government; but my submission is that this is a state of affairs which I for one am unable to contemplate or agree to, and for this reason. After all, no unit in these modern days can exist on a scale such as modern civilisation demands unless it has sufficient resources at its command; and it is no use trying to please the fancy of an Indian Prince simply because he delights to call himself a Prince by letting his State be a separate entity, irrespective of the consideration whether his people can benefit by it.

H.H. The Maharaja of Bikaner: They are not called Princes.

Dr. Ambedkar : I submit that at any rate this Committee should lay down certain qualifications which a State must fulfil before it can be admitted into the Indian Federation.

Chairman : This is very interesting. Are you able to help us at all with regard to what the qualifications should be?

Dr. Ambedkar : I would prescribe a certain area and a certain revenue as the tests. I cannot say off-hand what the area should be and what the revenue should be; but I take my stand on the fact that, if the Ruler of a State wants his State to exist as an independent State and to become a part of the Indian Federation, he should be able to prove that his country has the necessary resources and capacity to give to its citizens a civilised life. That is the stand I take.

Sir Maneckjee Dadabhoy : Am I to understand from my friend's statement that he would not permit a small State with small territory and small income to come into the Federation?

Dr. Ambedkar : Coming to the second part of the question, namely, the representation of the Indian States in the Federal Legislature, the Indian States have made it clear that they will come into the Indian Federation only if they are permitted to nominate their representatives to the Federal Legislature. Now, with all respect to the Indian Princes, I am afraid I cannot agree with them, and I must insist that their representation shall be by election. In making by submissions on this point, Lord Chancellor, the first thing I should like to point out is that, to my knowledge, there is no precedent in any constitution except one, which I am going to mention in a minute, where State Governments are allowed to nominate their representatives in the Federal Legislature. To recognise that a Unit of the Federation is entitled to representation in the Upper Chamber of the Federal Legislature is one thing; but it is a totally different thing from the other proposition, namely, that it is the Governments which should nominate their representatives to the Chamber. The two things are, in my opinion, totally distinct; and the only example I know in which such an arrangement was accepted and embodied in the constitution was the Constitution of the old German Empire, in which the Governments of the States were permitted to send their representatives to the Bundesrat. It may be that our brother Delegates on the other side of this table take their stand on this provision in the Constitution of the old German Empire. Before I proceed further I should just like to make this comment—that I am not sure if the Princes understand full well all the implications of this provision in the old German Empire. The representatives of the various States in the Bundesrat were no doubt regarded as ambassadors of the various States, working with definite instructions; but there was also this tremendous consequence flowing from it, namely, that the Bundesrat had the power to examine what might be called the credentials of the ambassadors. Not only that, but the Bundesrat had the power to enquire into dynastic matters concerning the various Princes governing the German States, because it followed that, unless a Prince was lawfully recognised as the head of the State, his delegation had no right to sit in the Bundesrat. Now, I wonder whether the Princes who base their claim on this analogy . . . .

Colonel Haksar: They do not.

Dr. Ambedkar: I wonder if they would permit the Federal Legislature of India to have such powers as the Bundesrat possessed. But, Lord Chancellor, I am not going to discuss this question by referring to precedents or to analogies; I am going to discuss this question on a totally different basis and by applying totally different tests. One thing we are all clear about is this, that we are framing a constitution for establishing a system of responsible government for India. And although we are discussing various matters, I, for one, can never forget that that is the principal objective and the principal task of this Committee. It follows from this that no concession can be made, no scheme can be adopted,

if ultimately it is found that that concession or that scheme is going to compromise the system of responsibility or is going to whittle down the system of responsibility at which we are all aiming.

Now, applying that test, it follows that you cannot consent to the claim of the Princes for nomination of their representatives.

Colonel Haksar: In which House?

Dr. Ambedkar: In either House; and for this reason. First of all, anyone who reads the Report of the Federal Structure sub-Committee will find that not only do the Princes want to come into the Legislature, but they also want to be represented in the Central Executive of the country; and it is only right that the Princes should have that objective, because they would gain nothing by merely coming into the Legislature—their real gain consists in having a hand in the Executive of the country. Now, bearing that point in mind, what I say is this—that you have in the Federal Structure sub-Committee laid down that the system of responsibility in the Central Legislature will be a system of collective responsibility. If the representatives of British India are going to come into the Federal Legislature by election, and if the representatives of the Indian States are coming into the Federal Legislature by nomination with definite instructions from those who will nominate them, I, for one, fail to understand how the system of collective responsibility—with divided mandates, with different instructions—is going to work in the future constitution of the country.

There is also another way in which the system of responsibility is going to be affected by the nomination of the Princes to the Federal Legislature. Sir Tej Bahadur Sapru yesterday very rightly condemned the existence of the official nomination bloc, and for the simple reason that, being at the beck and call of the Executive, the nominated bloc makes the Executive irresponsible to the Legislature. I think that is the gist of his argument for not supporting the official bloc. Now, the question that I wish to raise is this: Are we quite certain that the Princes' nominees to the Federal Legislature will not play the part of the official bloc? Speaking for myself, I will be quite candid and say that I am not certain about it; and I will make my position quite clear as to why I say that. We all know that the Princes carry on the administration of their States under what is called the system of paramountcy, and I think we all know that one of the incidents of the doctrine of paramountcy is that the Paramount Power claims the right of advising the Princes on the matter of important appointments.

H.H. The Maharaja of Bikaner: Not in all. It may be in one or two cases.

Dr. Ambedkar: Well, I can only say that that is what the Butler Committee stated.

Colonel Haksar: Did they?

H.H. The Maharaja of Bikaner: Did they? If they did they were wrong, as they were in some other respects.

Dr. Ambedkar: I think I am right; at least, that is how I have understood it. Add to this the fact that paramountcy in the new constitution is contemplated to remain a reserved subject. Now, supposing the Political Department, which will be exercising the powers of paramountcy, claims the right to advise the Princes in the matter of nomination to the Federal Legislature, what is the effect?

H.H. The Maharaja of Bikaner: It cannot and would not; and that would not be accepted by the States.

Dr. Ambedkar: What I say is this. Suppose the Political Department claims that the nomination of the Princes to the Federal Legislature is an important appointment, and as such the Political Department must exercise its right to advise the Princes —what happens? So far as I am able to judge, so far as I am able to conjecture, the only result will be that the Princes' nomination will in fact be nothing less and nothing else than the official bloc replaced in another form.

Colonel Haksar: It does not happen.

Dr. Ambedkar: And now, at this stage, My Lord Chancellor, I would like to say one thing . . . .

Sir Maneckjee Dadabhoy: But you have not given us the solution of that problem.

Dr. Ambedkar: I say election, absolutely.

Colonel Haksar: Dr. Ambedkar, would you at some time or other give us the reference to the Butler Committee's Report?

Dr. Ambedkar: I will try.

Colonel Haksar: Because you credit them with the assertion that the Political Department makes appointments in the important States.

Dr. Ambedkar: Well, Colonel Haksar, we will not wander into a controversy; but if paramountcy is not brought into operation many other influences could be brought to bear.

Colonel Haksar: You are departing from your position.

Dr. Ambedkar: No, I am not. I will give you the reference.

Now, My Lord Chancellor, there is just this one observation that I would like to make—which I have no doubt made earlier, but I would like to emphasise it. Of course, we are all trying to work out a federal constitution for India as a whole. But I would also like to emphasise that we are not here merely for the purpose of getting a change in the form of Government; a change from a unitary government to a federal government.

Chairman: Some people say: whatever be best administered is best.

Dr. Ambedkar: Yes, but I thought we were all agreed on the fact that the thing that is best administered is responsible government. Therefore, although I am willing to make any concession possible in order to bring this Federation into existence, I cannot be a party to any concession or any compromise, as I said, which will only give us the skeleton of federation without the soul, namely, responsible government.

Frankly speaking, I really do not understand why the Princes should oppose the principle of election. Even in the old German Empire, where the right of the federal units to be represented by their governments was conceded, it was also conceded by the States that the Lower Chamber, the Reichstag, should be constituted by election by the people of the States. I cannot see what objection there can be on their part, because all that popular election to the Federal Assembly in the Native States would involve would be the dividing up of their territory into so many constituencies. I could quite understand their objection if we were saying that they must have legislative institutions in their own territory which would control their own administration; but we are not saying anything of the sort. All that we are saying is this: permit us to divide your territory into constituencies and let your people elect your representatives who will come and vote in the Federal Assembly, not to decide upon your particular matters, not to determine the affairs of your State, but to discuss the affairs of India as a whole. I certainly do not understand what objection there can be from the point of view of the Native States.

Sir Maneckjee Dadabhoy: And in small States also?

Dr. Ambedkar: If they accept the view which I am urging, that election to the Federal Assembly cannot disturb their own administration—cannot cause any prejudice to their own States—then I submit that, so far as the problem of the representation of the States in the Lower Chamber is concerned, it will be easy of solution. The problem of the representation of the States in the Upper Chamber, of course, will remain to be solved; and if it is to be solved by a method which will not involve the representation of the States by nomination, I beg to suggest two alternatives for it. The first alternative that I would suggest is the adoption of the Norwegian plan, where you have one elected Chamber popularly constituted, and where that Chamber elects out of its own members a Second Chamber, so that you will avoid thereby the difficulty of the States having to nominate their representatives in the Upper Chamber. Or, if that is not acceptable, there is another solution which I think may be offered. That is that the Princes may suggest a panel of candidates from which representatives may be selected to the Federal Legislature.

H. H. The Maharaja of Bikaner: By whom?

Dr. Ambedkar: By the Lower Chamber. But in any case I must make it plain, so far as I am concerned, that I shall not be a

party to any system which permits the representation of the States by nomination.

Now, My Lord Chancellor, I will take up the other head of discussion, namely, representation of special interests.

Chairman: You have got to No. (v)—provision made for the representation by special constituencies of special interests.

Dr. Ambedkar: The first thing I would like to make clear is this: I do not want the Depressed Classes to be treated as a special interest. I want the Depressed Classes to be treated as a separate community for political purposes in the same way as the Muhammadans or the Christians are treated. They must have the same right of representation, not only in the Provincial Legislative Councils, but also in both Houses of the Central Legislature.

Chairman: When you say the same rights, do you mean to say they are to have the same number as the others?

Dr. Ambedkar: No; the numbers that they will be entitled to on the basis of the principle that may be adopted in common with all.

Chairman: You said the same. Thank you.

Dr. Ambedkar: Now I come to the other interests which have so far been recognised; namely, Trade, Commerce, Landholders and Universities.

Dr. Shafa'at Ahmad Khan: Not Universities?

Dr. Ambedkar: No, we have not got Universities. I am afraid I cannot give my consent to the representation of these special interests. First of all, I do not quite understand why, for instance, a landholder needs any special representation. I do not know what are the difficulties and disabilities from which he would suffer if he were to stand out in a general constituency and seek the suffrages of his people. There is nothing to prevent him from doing that. In all other countries—for instance, in England and all European countries—no provision is made, I am sure, for the special representation of such interests as Trade, Commerce and Landholders; they are allowed to find their place through the general electorates, and I think the same system should be adopted in India. My further objection to making any special provision for the representation of these interests is this: first of all, these interests get themselves represented by a very, very narrow constituency; it is almost by a clique. Now, if their voting power were confined to matters which concern them, the evil would be comparatively small. But they do not only come on the basis of this restricted constituency into the Legislative Council; they vote upon all and sundry matters that come before the Legislative Council. One of the things that I have noticed in the Bombay Legislative Council is this, that we have there constituencies for Trade and Commerce. Now Trade and Commerce in the Bombay Presidency have been the monopoly of a special community which I am sorry to say is the most orthodox community known to me.

Mr. Jayakar: Politically?

Dr. Ambedkar: Socially. Now, such members get these easy pocket constituencies in order to get themselves into the Legislative Council. Then, if any progresive measure is brought forward, they come and side with the orthodox and thereby defeat the ends of freedom and progress. I therefore object to it. If any such provision were necesary, I would make this concession—that any such interest, for instance Trade, Commerce or Landholders, may have the right to be heard in the Legislative Assembly or the Upper Chamber whenever a Bill affecting their particular interest is being discussed. The right of audience may be granted, but there is no necessity for granting them membership of the Legislature or the power of voting on any Bill that comes before the Legislature.

With regard to Labour I would say this. I do not know whether my friend Mr. Joshi will agree with me or not; but my own view is that, if the system of adult suffrage comes into operation—and I hope that, with the help and support of Mahatma Gandhi, we shall be able to carry it through in his Conference—then there may perhaps be no necessity for the special representation of Labour; but if we adopt a system of representation which keeps out a large body of the working classes from the constitution, so that they cannot control the Government and influence it for bringing about their welfare and their prosperity, then there would certainly be a necessity for making special provision for the representation of Labour, and I think that could be done by recognising the various unions as the electoral colleges for the purposes of such representation.

The next topic to which I propose to refer is the question of nominated members. I suppose—I am not sure—that the object of having a bloc of nominated members in the Federal Legislature is principally to give support to what are called Crown subjects, or what in the Provinces, under the Dyarchical System, were called reserved subjects. First of all I should like to make it plain that I have a great horror of this nominated bloc of officials. If there is any institution which, in my opinion, has absolutely destroyed the system of responsibility in the Provincial Governments, which was sought to be introduced by the Montagu-Chelmsford Reforms, it is this institution of the nominated official bloc. It is this which has perverted the whole system. It is this group which has made possible, in the Provinces, government by a minority against a majority. It is this group which has made alliances with all sorts of people and groups—not necessarily groups which needed its help or support, but groups which were ready to sell themselves for petty gains. I have, as I say, the strongest objection to a nominated official bloc.

My next submission is that this nominated official bloc is really not necessary at all for the purpose of lending support to what are called the Crown subjects. In the Provincial Constitution, where we have now the system of reserved subjects, we have various methods of supporting and safeguarding these reserved subjects. First of all, under Section 72-D, we have a person in charge of these reserved subjects who is non-removable and whose salary is

non-votable; secondly, the Governor has been given the power of certifying expenditure which he thinks is necessary for the purpose of safeguarding the reserved subjects; thirdly, the Governor has the power to certify Bills which he thinks are necessary for the purpose of maintaining the efficiency of the reserved subjects; and lastly, the Governor has the power to veto any Bill to which he has an objection. My submission, Lord Chancellor, is that the safeguards which I have just mentioned—namely, non-removability of the person in charge of the reserved subjects, the non-votable character of his salary, the power of certifying expenditure which the Governor possesses, the power of certifying Bills necessary for the safety of the reserved subjects, and the ultimate power of the Governor to veto a Bill—are quite sufficient, in my opinion, to maintain the integrity of what are called Crown subjects.

Sir Tej Bahadur Sapru: May I ask you one question at this stage? You suggest there should be power of certification?

Dr. Ambedkar: I do not suggest there should be power of certification; I will deal with that matter at a later stage. What I am saying is that these are other alternative methods which are provided in the constitution beside the nominated official bloc. That is my argument. My submission is that, when you have such abundance of legislative and executive powers in the Government to safeguard what are called Crown subjects, there is no necessity for having an official bloc in the Legislative Council at all.

Secondly, what I say is this, that by having a nominated official bloc you disguise and conceal the real character of what is occurring. There are many measures which the Legislative Council probably would not have passed if the nominated official bloc had not been there, and which the Governor would have been obliged to certify or carry through in some other way under his special powers; but, because of the presence of a nominated official bloc, you have the anomalous position of giving the appearance to the outside world that the Legislative Council is working normally on the basis of majority rule, when, as a matter of fact, the decisions have been taken by a minority with the help of the official bloc. I submit, therefore, there is no use in the future constitution of India for this nominated official bloc.

There is one last subject to which I should like to refer, namely, the question of the Oath. This question, in my opinion, is a very big one; and it is a question which opens up another big question, namely, that of common citizenship for India. In the short time which I have at my disposal I do not think it will be possible for me to discuss the whole subject; and I would therefore request that a special occasion may be provided when this question can be thrashed out, because I hold the view that there can be no real federation unless there is common citizenship. It would be a misnomer to call a constitution a federal constitution if it did not provide for a common citizenship. This, as I say, is a point which I cannot develop at the moment because there is not sufficient time.

(The Committee adjourned at 4-10 p.m.)

PROCEEDINGS OF THE TWENTY-FOURTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THURSDAY, THE 17TH SEPTEMBER 1931, AT 11 A.M.

HEAD 2.

Questions connected with the Election of Members of the Federal Legislature—(continued).

Sir Sultan Ahmed: Lord Chancellor, Eloquent tributes have already been paid by the new members of the Federal Structure Committee to the way in which Your Lordship conducted the proceedings of the last Session. I, who have been familiar with Your Lordship's patience, skill and guidance, need not, therefore, add anything to them; yet there is one thing which I learnt yesterday which I had not learnt before, and that makes me feel that it is my duty once again to repeat what I submitted last year. I learnt yesterday for the first time that Your Lordship's fascinating smile is sometimes a sign to us to continue and sometimes a very polite sign that we must stop.

Chairman: May I say you are a thought reader.

Sir Sultan Ahmed: Having said that, My Lord there is one other preliminary observation which I may be permitted to make. We of the Federal Structure sub-Committee unanimously resolved that the best form of the future government of India would be the federal system of government. Since we last met in England we have met again after very careful consideration of that very question in India, and it is a matter of extreme satisfaction to us that the conclusion at which we arrived then has been confirmed by all who are interested in the future advance of India. Mr. Gandhi, who is, more than anyone else, anxious to see the responsibility at the Centre vested in India, has accepted the principle of federation. I have not heard a single speech since last Monday by the new members to show me that the idea of federation is one which is not acceptable. Before I go further I must once again express my gratitude to the Princes who voluntarily and merely for patriotic reasons set the ball rolling last year and accepted the principle of federation.

My Lord, the first sub-head under Head No. 2 requires us to answer as to the method of selection, for each Chamber of the Federal Legislature, of the representatives of individual States and of groups of States. I respectfully submit that it would be proper, expedient and wise that the decision on this matter should be left entirely to the Princes. Some of us expressed an opinion last year, which was repeated this year, that, after all is said and done, once they decide to come to the Lower House, their representatives will come in contact with the popular representatives of British India; and we have absolutely no doubt as to what the effect of that contact in course of time will be. If any assurance were needed that the representation in the Lower Chamber will be such as will satisfy the requirements of the situation, we have got the assurance from

Their Highnesses and the representatives of the States in this Committee. My Lord, what greater assurance is necessary than was afforded to us by His Highness of Bikaner after consultation with His Highness of Bhopal? What greater assurance is necessary than was given to us by my friend, Sir Akbar Hydari? And the last assurance, given by Sir Mirza Ismail, is so clear that, in my opinion, it is absolutely useless to go further than that. Sir Mirza Ismail said:—

> "Each State may be left to determine for itself the best method of selecting its representatives having regard to the conditions and circumstances existing in it. The States will no doubt realise that the best and the most approved method of sending representatives to a popular Chamber is by popular election which may be either direct or indirect. This is the goal which they should keep constantly in view, to be reached as quickly as possible. I do not think that this Committee need go further than this; the rest may well be left to time and the inexorable logic of events."

I respectfully submit that this Committee, considering the materials at its disposal, can do no better than to leave this mater entirely in the hands of the Princes.

Item (ii) of Head 2 asks us to consider the question:—

> "If the method of selection is to be nomination, by what method is a State's representative's seat to be vacated otherwise than by death or on dissolution?"

I suggest, Lord Chancellor, that the following may be the other methods:—(1) bankruptcy; (2) if the member fails to attend two consecutive sittings of the assembly (I have got this from Section 31 of the North America Act and also from Section 53 or 55 of the Australian Act); and (3) if the member has been convicted of treason or any offence involving moral turpitude. The objection was taken by some of our friends on this side that it would be very difficult to define "moral turpitude", because it may be involved in political crime also. In my opinion, however, if an offence involves moral turpitude it does not matter what the motive of the offence—political or otherwise—may be; as long as the offence involves moral turpitude that is sufficient. A political dacoity, for instance, will remain a dacoity whether it is committed for political ends or from any other base motive. In my submission it makes no difference what the motive may be. Your Lordship will find a similar provision in other federal constitutions.

Item (iii) is:—

> "Are the British Indian representatives in the Upper Chamber (other than those, if any, representing special interests), to be—(*a*) directly elected by territorial constituencies, (*b*) indirectly elected by the Lower Chamber, (*c*) indirectly elected by the Provincial Legislatures?"

I should have thought that we would be absolutely unanimous in answering this question; that is, the British Indian representatives

in the Upper Chamber should be indirectly elected by the Provincial Legislatures. We were unanimous on the last occasion; and, but for the characteristic speech of Sir Maneckjee Dadabhoy, we should have been unanimous on this occasion also. We, who have had experience of practising at the Bar, know that if we have to cite an authority for a false proposition there is not much difficulty in finding an authority. The difficulty comes in when we come to apply that authority. My learned friend forgot primarily that we are not discussing the constitution of the Council of the State. He was thinking of the Council of which he has been such a distinguished member for the last eleven years. I would respectfully ask him to forget that distinguished assembly for a time, and think of the new Federal Assembly that we propose to establish in India. Primarily that was the fallacy; but he found an authority in the Despatch of the Government of India which had nothing to do with the Federal Constitution at all. All the arguments advanced in the Government of India's Despatch would be most usefully used by my learned friend, and I myself would use them when I came to deal with the question of representation in the Indian Lower Chamber; but there are very few constitutions in the world which have the federal system as the foundation, which have direct election of members in the Upper Chamber. In fact, when we come to deal with the question of representation in the Lower Chamber, doubts have been expressed whether, under the conditions prevailing in India, it is wise to have direct representation even there. The difficulty which has been pointed out against direct election in the Lower Chamber will apply more forcibly against direct representation in the Upper Chamber, considering the paucity of the members in the Upper Chamber and the wide range of area and population which the representatives will have to cover. I have, therefore, absolutely no hesitation, My Lord Chancellor, in submitting that the representation in the Upper Chamber should be indirectly, by the Provincial Legislatures.

As regards the representation in the Lower Chamber, I am constrained to come to the conclusion that this can only be done by the direct method. I have advisedly used the word "constrained" because I have seen the force of the argument against this form of election in the Report of the sub-Committee. I have carefully considered the difficulties, which have been pointed out in the Report, of this form of election. I have also considered the various devices which were suggested as alternatives to direct election; and, in response to the invitation which Your Lordship will find in the last few lines of paragraph 32, I have endeavoured to explore other methods before a final decision is given. I have considered whether election through the district boards and municipalities will be desirable. I have considered whether election through different headmen or different groups of villages will be desirable. In fact I have considered other methods also: but ultimately I have come to the conclusion that, after all is said and done, apart from the fact that indirect election will be unaccepable to the people of India, and in spite of the difficulties which have

been pointed out, perhaps it will be more expedient to adopt the direct method for the Lower House. We are, My Lord, trying to evolve a constitution which will be best suited to the conditions of India; and, if we have to make a departure from the established rule of direct election in the Lower House as in the other constitutions in the world, there must be very solid ground for doing so; and, in spite of the difficulties that have been pointed out, I have now come to this conclusion—that direct election would be the best method. I therefore answer the fourth question by saying that the British Indian representatives in the Lower House should be directly elected by territorial constituencies.

I now come to (v):—

> "Is provision to be made for the representation by special constituencies of special interests, other than communal interests, and if so, for which interests—(*a*) in the Upper Chamber, (*b*) in the Lower Chamber?"

My answer is, in the words of the Report, that—

> "Special interests, namely the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce (European and Indian) and Labour,"

should have representation in both Chambers.

Item No. (vi):—

> "Are any special qualifications to be laid down for eligibility for membership of the Upper House?"

I would answer this question, My Lord, by saying firstly that the minimum age should be 30. There should be a property qualification, and all the other qualifications that we find for the membership of the Council of State. I would add one further qualification, and that is, ex-Ministers, ex-Members of the Executive Council, ex-Judges of the High Court and ex-Vice-Chancellor of the Universities. This is for the Upper Chamber.

Item No. (vii):—

> "What requirements, if any, are to be made in in the matter of an Oath of Allegiance on assumption of a seat in either Chamber."

I would accept, My Lord, the statement on this point made by my learned friend, Sir Tej Bahadur Sapru, and also the statement made by my learned friend, Sir Muhammad Shafi.

Item No. (viii):—

> "What provision, if any, shall be made in each Chamber for nominated members, and for what purposes."

As regards that, I would accept the provision made in the Report, paragraph 34:—

> "That the Governor-General should be empowered to nominate a specified number of persons, not exceeding, say, 10, to each Chamber."

As regards the purposes for which they should be nominated, it is difficult to specify them; but I should think that they would include the experts for certain legislation and Crown representatives. I would give them as full powers of membership as the other members—the power of voting and the power of expression of opinion.

These are the submissions that I have to make on the various sub-heads.

Mr. Gavin Jones: My Lord Chancellor, I will confine my remarks to the questions you have put to this Committee under Head 2.

With regard to questions (i) and (ii), these are matters that entirely concern the Indian States, and I will not presume to offer them advice. All that we British Delegates are interested in is that the States should be adequately represented in the Federation—that they should be represented in a proportion that will be fair to British India; and as to the method of their appointment I think we must leave that entirely to the Indian States. I think that we British Delegates will make a mistake if we offer advice on these matters, which are entirely within the internal economy of the States, and that we should leave such matters to right themselves afterwards.

My reasons for saying this are, first, that we cannot generalise about the internal economy of the Indian States, because they are extremely varied. Secondly, I am not at all certain that some of the Indian States are not advancing politically on sounder lines than British India has been. Thirdly, and most important, we want a federation of all India, and we must do everything we can to obtain that federation. This Committee has been appointed for that purpose by the Conference; and all of us agree that the only solution of the problem of the future government of India is an all-India Federation. And may I say here that no responsibility can be transferred to any government that is not representative of all India and of all interests in India. The great advantage of this Federal Government is that the constituent states, both British India and Indian States, will be able to develop themselves on the lines most suited to their conditions; and, after the Federation is formed, we will not be able to interfere with the internal affairs of other States. Here we have got to imagine that we are representatives of states endeavouring to come together for the common purpose of dealing with subjects which are only of federal interest.

Regarding questions (iii) and (iv)—the method of appointment of British Indian representatives to the Upper and the Lower Houses, other than those representing special interests—if you will permit me, Sir, I will deal with (iii) and (iv) together. I am still personally of the opinion, as I was at this Committee in the last Conference, that the soundest representation really is the representation of governments; but the consensus of opinion is evidently that the method of appointment to the Upper House should be by indirect election from the Legislatures of the constituent states. Therefore

our community agree to that, on one condition which I will mention in a minute. As regards the Lower House, we are of opinion that the best method of appointing representatives to the Central Legislature is by indirect election; but it is evident that popular opinion desires that the representation should be direct. To this we agree, provided, as I have said, the following condition is fulfilled. We think that, if the Upper House is indirectly elected and the Lower House directly elected, it will not be truly representative of the federal governments; and it is most important that, if this form of election to the Upper and Lower Houses is adopted, it should be truly representative of the federating units, and that the two Houses should have equal power. The individual rights of the federating units must be adequately protected in the interests of all the states, including the Indian States and the future British Indian States. This can only be done, in our opinion, if the Upper House has the same control as the Lower House over all matters, including finance.

In regard, Sir, to question (v)—the representation of special interests—we are strongly of opinion that the special interests that are now represented in the Legislature should also be represented in the future Government in both Houses of the Legislature. These will include Commerce, Landholders, Labour, Depressed Classes, Europeans, Anglo-Indians and Indian Christians. As regards the representation of Europeans, we maintain that we should have the same proportion of representation as we now have in the Central Legislature.

Chairman: Would you kindly help me, Mr. Gavin Jones, as to the sort of method by which you think the Europeans ought to be elected or selected or nominated, whatever the word may be.

Mr. Gavin Jones: We suggest that there should be constituencies as there are at present, and that they should elect their own representatives.

I would like to touch on a point which Mr. A. R. Iyengar made, that he thought that Europeans would be elected in a general constituency. Now, we are quite sure that we would stand no chance, speaking generally, of being elected in general constituencies; and this is confirmed in the Report of the Indian Central Committee by Indians themselves on page 46 of the Report.

As regards the representation of Commerce, we are of opinion that both British and Indian Commerce should be represented by three or four members in each House. I mean three or four members for Indian Commerce and three or four members for European Commerce.

As regards question (vi)—the qualifications of the Upper House—we think that the present qualifications should be maintained, and that the age limit should not be reduced below 30.

Now, Sir, as regards question (vii), regarding the Oath of Allegiance, this is a very important matter. Sir Tej Bahadur Sapru has quoted to us the Irish Free State Oath. In that con-

nection His Highness of Bikaner and Sir Akbar Hydari remarked that their subjects could not take any Oath which in any way detracted from their allegiance to the Rulers of their States. Our position is in a way analogous to that of the subjects of Their Highnesses; we cannot possibly take any Oath which will conflict with our individual allegiance to the King-Emperor. We are proud of being subjects of His Majesty, and we take up the standpoint that the Oath of Allegiance should be the same as in all other Dominions except the Free State. The Irish Free State was formed under abnormal circumstances and really was a matter of compromise. We consider that the Irish Free State Oath is objectionable, because it implies loyalty to a Constitution above loyalty to the Crown, or to the Sovereign of the State to which the subject may belong. The position of the subjects of the Indian States is slightly different from our position, because they are independent States and their subjects owe allegiance primarily to their respective Rulers. We would therefore suggest that the Oath should take the following form:—

> "I do swear that I shall be faithful to bear true Allegiance to His Majesty King George V, King of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India, His Heirs and Successors according to Law, and to—(and here insert the name and title of the Sovereign of whom the individual is the subject)—His Heirs and Successors according to Law. So help me God."

Now, Sir, I am perfectly sure that nearly everyone here will be satisfied with an Oath which holds goods in all the other Dominions except the Irish Free State. After all, the King-Emperor will be the Head of the Federal Constitution as much as he is the Head of other Dominions; and when you swear Allegiance to the King-Emperor, you will in fact be swearing Allegiance to the Constitution which has been appointed by the King-Emperor. We want, Sir, to be quite clear on this point, so that there will be no confusion hereafter; and we plead with our British Indian fellow-subjects that they should adopt this form of Oath.

Regarding question (viii)—the provision of nominated members in each Chamber—at the last meeting of this Committee in the last Conference I pointed out that the ten members suggested in the Report were totally inadequate because of the enormous interests and obligations which the Crown has to bear. I would suggest, therefore, that the representation should not be reduced below at least ten; and, instead of fixing it at the number of ten—which is inconvenient because we do not exactly know yet how many members there are going to be in the Legislatures—I would put it that the representation of the Crown should be 10 per cent. in the Upper House and 5 per cent. in the Lower House. We think this is inadequate; but, in deference to our other British Indian Delegates, who seem to fear an official bloc, we will not press for more. This bloc will not necessarily be an official bloc. The Governor-General will have it in his power to appoint whomever he thinks advisable;

and although it is not necessary that the members should be officials, certain officials representing Crown subjects will probably be appointed. Sir, that is all I have to say at present on these subjects.

Chairman: I have been asked to tell you as concisely as I can what is the view taken by His Highness of Dholpur upon these questions. I am not going to be very long; but I have had the advantage of speaking about the matter with Sir P. Pattani, who has told me roughly what the idea is; and I think I had better tell you so that you will know it. You will quite understand, however, that, in the first place, I am not at all expressing my own opinion, and, in the second place, I am only endeavouring to put what would have been put very much better, had he been present, by His Highness of Dholpur. He will be here, I hope, next Monday; but it is important you should know his views in order that, if you desire to make any remarks upon them, you should have the opportunity.

The position is this. His Highness says that, just as there are some subjects which may concern British India itself—Central subjects—so there may be, and probably are, some subjects which concern all the States centrally, as it were—not Federal subjects, but subjects which concern the States centrally just as some subjects concern British India centrally. He then asks whether it would not be well—just as British India can deal with its own Central subjects—so there should be some organisation which would deal with the Central subjects which concern the States; and he envisages that a very useful body for that purpose would be the Chamber of Princes—not the Chamber of Princes necessarily as it at present exists, but, to quote his exact words, "a Chamber of Princes substantially enlarged and constitutionalised as a confederated Indian India." That Chamber would deal with the class of subject, if there are any, which is Central as far as the States are concerned, just as there may be some subjects which are Central as far as British India is concerned. Those who think with His Highness—I do not know who they are; that does not concern me, since I am endeavouring only to put this view as clearly as I can—think that this "enlarged and constitutionalised" Chamber of Princes can also serve another purpose, and that purpose is this. It might be used as an electoral college for electing the members to represent the States, as I understand it, both in the Upper House and in the Lower House of the Federal Parliament. Sir Prabhashankar will correct me if I am wrong; I am doing the best I can under the circumstances.

What he says with regard to that is this—and this will concern Your Highnesses. He says that that electoral college will be able to elect, nominate, appoint, select—whatever word you like to use for the moment—the representatives of the States to the Federal Houses of Parliament. But it might well be that they would always have to elect—I am only giving you hypothetical figures—two or three members from Hyderabad and one or two, or two or

three, or three or four—whatever you like to put—from one or two of the other bigger States. They would not be quite free to elect whom they like; the bigger States would be entitled to have two or three—or whatever it may be—representatives. In that sort of way, he says, you will get the great majority of the States, and in particular all the smaller States, represented upon this electoral college; and in that sort of way they will get an indirect representation by being able to appoint their people to the Federal Houses of Parliament.

As a corollary of that he says that, if that is the proper thing to do—if that is the desirable thing to do—then the position may be regarded in this way. It will not be a Federation, we will say, of British India on the one side plus, on the other side, Hyderabad and Bikaner and Kashmir and so on— forgive me for not mentioning all the Indian States—but it will be a Federation between British India on the one side and, on the other side, a Confederation of States electing their members through the Chamber of Princes. He says that is a sort of compromise between autocratic representation—forgive me for using the word—of the Ruler of the State and popular election; it is a sort of popular election by the Rulers of many States and not an autocratic selection. Then he says, as a corollary to this—and this is an important thing as far as all of you are concerned—that, if that is so, ought not it to be 50/50? You know what that means!

I think, Sir Prabhashankar, I have put it more or less accurately. His Highness of Dholpur will be here on Monday, and then will be the time to ask him questions. But I thought it would be wise that I should tell you this at once so that, if you want to make any comments, you can do so.

Sir Tej Bahadur Sapru: I do not want to cross-examine you, My Lord, but I do want to suggest two questions, in order that I may get an answer to them at some stage or other either from Sir P. Pattani or from His Highness of Dholpur. My first question is this: When the authors of this scheme talk of Central subjects affecting all the Indian States, do they contemplate a Chamber of Princes to legislate for all the States in regard to those Central subjects? That is the first question. As part of that question I should like to ask: How do they reconcile their idea of sovereignty with this proposal, which will impose upon them the sovereignty of the Chamber of Princes? My next question is : Is it contended really by the authors of this idea that the Princes, who will constitute the members of the Chamber of Princes, will be the electors; and may we reasonably expect (using the word which was used by Your Lordship) that the autocratic Princes will be able to select democratic representatives for the Lower House?

Mr. Iyengar: Your Lordship used the words:

> "A chamber of Princes substantially enlarged and constitutionalised as a confederated Indian India."

Can we get any light to-day or later on the word "Constitutionalised"? Your Lordship also referred to popular election by the

Rulers. That is a matter upon which I would desire to have very much more light. What is popular election by the Rulers?

Sir Muhammad Shafi: Does the scheme contemplate that representatives of individual States will be elected by this Chamber of Princes collectively?

Dr. Shafa'at Ahmad Khan: I have no desire at this stage to make any comments upon the proposals which His Highness The Maharaja of Dholpur is going to raise. I think that it would be best if we did not decide finally on the important issues in Item (i) until we have heard the Maharaja of Dholpur. My first impression is that the scheme will not work, but I cannot go beyond that. I hope that, if the proposal is made, we will be allowed to express our views on some of the points mentioned by you, Lord Chancellor.

I come now to the question before us, Head 2. With regard to Head 2, Item (i), it is difficult for me at this stage to formulate or to express finally views with regard to the method of representation by groups of States; but, so far as (i) (*a*) is concerned, I am definite that it should be by election. I believe that the members of the future Federal Legislature should all be elected to the Lower Chamber, and I feel that the work of the Lower House will be very seriously affected if some of the members are nominated by the Princes. I admit the great work which the Princes have done for our country, and I take this opportunity of paying my tribute to His Highness The Maharaja of Bikaner and the Chancellor of the Chamber of Princes, for the great and unexampled policy which they adopted last year of agreeing to join the Federation; but I am not convinced that our Federal Legislature will really work satisfactorily if we have in either House a body consisting of nominated members from the States on one side, and elected members on the other. It will have a very serious effect upon the working of our Parliamentary machinery. At the present time, nominated members are appointed for various considerations. There are, of course, good members, and there are incompetent members; but I may say that generally the members nominated by the Government have done exceedingly good work. Some of them have been men of great eminence, of merit, of service, and of experience. If members are nominated in the future, not by the Government, but by the Princes, in the first place there is no guarantee that the standard which has been hitherto maintained will be kept up. In the second place, it will have a very serious effect upon the development of party government in future India, because there is a unity of policy and a uniformity of programme so far as British India is concerned; but if we have, say, one-fourth of members of our future Legislature coming from all the four corners of India (some from Kashmir, and others from Manipur), it will have a very serious effect upon our party system, because the policy that they would pursue would be dictated to them by the Princes from headquarters, and the policy may, therefore, be so thoroughly inconsistent as to be entirely destructive. Consequently, I think that it will have a very serious effect upon the development of party government in the Lower Chamber. There will be a lack of confidence in the

party system as a whole, and ultimately there will be, I fear, Ministerial instability. You will never be sure upon any point what policy the members from the States are going to adopt.

Then, My Lord, it is said by the Indian States that the question of election or nomination is entirely one for the States themselves. I made it perfectly clear in my last speech that, so far as the internal autonomy of the Princes is concerned, I am and have been a great champion of the policy of non-interference in their domestic affairs. I regard the sovereignty of the Indian States, as regulated by the Treaties, as inviolate; but my contention is that, when the representatives of these States come into either the Lower Chamber or the Upper Chamber, it will not then be a concern merely of these States. When they come into the Legislature, our Legislature is profoundly affected by the entry of a very large bloc into the Lower House. Its entire outlook, policy and procedure are changed by the existence of heterogeneous individuals. Therefore, it is not merely the concern of these States, but it is also the concern of the members of the Legislature from British India.

For these reasons, Lord Chancellor, I think that, so far as this point is concerned, the principle of election for the appointment of representatives from the States will have to be maintained. I leave it to the States to decide whether election should be direct or indirect.

With regard to the franchise, I am perfectly willing to leave the details of the franchise to be arranged by each State as it likes. This is done in all federal constitutions, and the States may suggest any franchise they may deem necessary, suitable or convenient for their purpose.

With regard to the Upper House, I think the Governments of the States should have the right to nominate representatives. I feel that this method is likely to produce a more efficient House even than the House we have got now. The Council of State existing at the present time has not, I am sorry to say, realised our expectations. I look forward to an Upper Chamber which will perform the functions which used to be performed so efficiently and thoroughly by the Bundesrat of the old German Empire; and, from this point of view, I can quite imagine the representatives from the various States in the Upper Chamber doing the work in that Chamber with a thoroughness, a skill and an efficiency that may make it a very efficient and workable body.

With regard to the question of the selection of representatives of groups of States, on this point I have nothing to say. I think that is a matter which must be left entirely to the States themselves. The States will have to be grouped, and it will be for the States themselves to suggest the methods and the principles on which they should be grouped and the number of votes which should be allotted to each State or group of States.

I come then to (iii). With regard to (iii), I am of the opinion that the British Indian representatives in the Upper Chamber should be indirectly elected by the Provincial Legislatures. I will

not adduce arguments in favour of this proposal, because so many arguments were adduced yesterday; but I will only say this, that about three years ago the members of the Simon Commission in the United Provinces, of which I happened to be a member, considered this question in all its aspects, and they came to the conclusion that, with a view to the co-ordination of the work of the Provinces with that of the Centre, it was necessary that there should be election by the Provincial Legislatures to the Central Legislature. I should like to add, however, that my support of indirect election is subject to two conditions—the conditions mentioned by the Government of India in paragraph 145 of their Despatch. With your permission I will read out a passage from paragraph 145:

> "The present method of returning members of the Council of State by direct election has been successful in composing the upper house on suitable lines. Our own preference would be for maintaining the present system; but we recognize that, if the Assembly were to continue to be constituted on the basis of direct election, there might be some advantage in taking occasion through the Council of State of familiarizing men's minds with the federal idea and the system of indirect election proposed by the Commission. We would, however, make our acceptance of a change in the existing method of election conditional upon two objects being attained. We should wish to be satisfied that the change involved no prejudice to the rights of minorities. Our second proviso would be that the change commended itself to public opinion. Subject to these two considerations, we should be prepared to accept the proposals of the Statutory Commission."

While I am on this subject I should just like to point out one or two difficulties which might be experienced by the small communities, and which might necessitate a slight modification of the proposal I have just supported. In the case of the Indian Christians, for instance, who are scattered throughout the length and breadth of India—though the majority of them are concentrated in the Madras Presidency—it might be very difficult to get any Indian Christians returned indirectly by a Provincial Legislature; and in these cases some provision should be made whereby their representation would be secured. The normal procedure which has been adopted has been that existing organisations of the various communities concerned have proposed a list of three or four names for membership of the Legislature; the names have been submitted to the Governor, and he has selected one of them. I do not know if the community would like to maintain the present system: I only wish to draw your attention to the necessity of making some provision for the representation of very small communities who really may not be able to get in through the single transferable vote.

I now come to (iv). With regard to (iv), I am of the opinion that the members of the Lower Chamber of the Federal Assembly

should be directly elected by territorial constituencies. I believe that this is the most practical, and, I should say, the most popular, system. If we suggest any other plan at this stage it will be unacceptable to the people of India. Direct election is, to my mind, the best method. I should, however, like to draw your attention to the proposal which was made in the Franchise sub-Committee of the Round Table Conference, and which has been referred to the Expert Franchise Committee for their consideration. May I just read out this paragraph, which is paragraph 4 on page 57? This is what they say on that page:—

> "We recommend that, in addition to providing for this increase, the Commission should consider the introduction of a scheme by which all adults not entitled to a direct vote would be grouped together in primary groups of about 20 or in some other suitable manner, for the election of one representative member from each group, who would be entitled to vote in the Provincial elections either in the same constituencies as the directly qualified voters or in separate constituencies to be formed for them."

I do not commit myself to the proposal, but I think it is well worthy of consideration by the Expert Franchise Committee. This proposal was made by Lord Zetland in the Franchise sub-Committee of the Conference. I did not support it then, because I was not sure it would work. I think, however, that in some cases—in the case of the Assembly, for instance—it might be convenient if enquiries were made as to whether it is practicable and whether we can apply it to the complex conditions of India.

Here again, so far as these very small minorities are concerned, I think it might be very difficult to get them directly elected by territorial constituencies. In my own Province there are only about three lakhs of Indian Christians; in the Punjab there are about three lakhs; only in Madras do you find a large number. It would be quite impossible for any person belonging to that community, who wished to stand for the Assembly in his constituency, to organise an election in three or four Provinces. The expense would be prohibitive, and the effort to succeed would be hampered by lack of party organisation and by other reasons.

I would certainly have liked the constituencies for the Assembly to be much smaller. I have had experience of two elections for the local council, and I have also been instrumental in helping in organising a few elections in various other districts; and I can say that it is very difficult indeed, with the constituencies as they exist now, for a member to keep in touch with his constituents. There have been and there are a very large number of members who do manage to keep in touch, and who periodically visit their constituents. I know members of my own party who have done that in the past—who visit the villages and talk to the villagers, and who manage to keep completely in touch with their constituents. But if a constituency is spread over four Districts, as there are cases, or

over one whole Division or two Divisions—as in one constituency I know, which extends over a very wide area—it is very difficult indeed to make a representative system really efficient. But I am afraid there is no other method that I can think of. An electoral college consisting of members of the local bodies will not work. For a few years I was chairman of an association in my own Province which included representatives of municipal boards and district boards. I tried to keep in touch with the members of various bodies in each district. I know how difficult it is for members of local bodies to take an interest in provincial politics or national politics, and I feel that the very principle of encouraging local bodies in this is fundamentally wrong.

Chairman: If you would just help me, I do not quite follow from your last four or five sentences why you say it would not work. I can understand difficulties of organisation; I can understand difficulties of expense; but are you putting it upon the ground that the local people take no interest in politics?

Dr. Shafa'at Ahmad Khan: I should not have said it would not work. I should have said it would not really be useful, because the members of these bodies, in the first place, do not take a very keen interest in provincial politics. In the second place, they will really be neglecting their own work if they occupy themselves with functions with which as members of those bodies they are not concerned. The proper sphere of work for a local body is local affairs—management of the local affairs, sanitation, public health, lighting, and so on; but if a local body is also given the power to help in the election, or given the power of influencing elections, to the Provincial or Central Legislatures, then in that case I am afraid the primary duty imposed upon them will be neglected, and the local bodies will be involved in inextricable confusion—confusion of aims, confusion of policy, confusion of method. For these reasons I do not think local bodies should be brought into the arena either of provincial politics or of national politics. They should be kept strictly confined to the work committed to their charge; so that the only method which I can think of at the present stage is direct election by territorial constituencies. But the proposal of Lord Zetland is certainly worth consideration. This is all I can say about that at the present time.

Now, Sir, I come to No. (v). As regards No. (v) I agree generally with what was said so lucidly and ably by Sir Tej Bahadur Sapru. I am very glad indeed that he has made it perfectly clear that he would like these interests to be safeguarded; but I think he left out landlords.

Sir Tej Bahadur Sapru: I am not opposed to it; on the contrary, I would support that.

Dr. Shafa'at Ahmad Khan: Lord Chancellor, the tenancy problem in my Province is very acute at the present time; it has been acute during the last ten years. We had one very compre-

hensive and very important Bill passed into law in 1921, the Oudh Tenancy Act. Then five years afterwards, in 1926, the local Council passed another far-reaching Act dealing with the relations between landlord and tenant. During the last two years the position in Oudh has become very serious indeed, extremely serious. I do not wish to say anything here about the necessity for the maintenance of good relations between the two classes; nor do I wish to go into details of various measures. All I would like to impress upon the members of this honourable body is that, in my humble opinion, some provision should be made for the adequate representation of the landlords in the Federal Legislature.

Mr. Joshi: And tenants also.

Dr. Shafa'at Ahmad Khan: I will come to that.

Chairman: "Landords" you said.

Dr. Shafa'at Ahmad Khan: Landlords, both in the Lower and in the Upper House. I feel that the landlords, if they are not protected, will not be able to safeguard their interests. In 1919, 1921 and 1922, when the new Governments in Europe came into power, the first thing they did was to start almost revolutionary agrarian measures for the purpose of expropriating landlords of foreign extraction. I think in Poland, Latvia, Esthonia and Czechoslovakia, agrarian measures, which were almost revolutionary measures, were passed with a view to taking the property of one class and giving it to another class. I do not contemplate that this will be done in India. The relations between landlords and tenants in my Province are excellent.

Chairman: Are you speaking of the United Provinces?

Dr. Shafa'at Ahmad Khan: I am speaking of Agra, not Oudh. We consist of two provinces Agra and Oudh. In the other part of my Province, Oudh, the relations are not so good and I can quite imagine there might be a possibility of a serious trouble in future. In order, therefore, to provide against the possibility of their being completely ignored, I do hope that some representation will be given to the landlords in both Houses.

Sir Tej Bahadur Sapru: May I point out that we are considering here the question of the Federal Legislature and not the Provincial.

Dr. Shafa'at Ahmad Khan: I am speaking of the Central Legislature and not the Provincial.

Sir Tej Bahadur Sapru: The law relating to the relations between landlords and tenants has nothing to do with the Central Legislature; it is a Provincial matter.

Dr. Shafa'at Ahmad Khan: I should like to remind Sir Tej Bahadur Sapru that I mentioned I was only giving an example and illustrating the necessity for the representation of a class which I think deserves the support of every impartial person.

Then, Sir, as regards the other interests, I am in favour of the maintenance of the privileges enjoyed by the various interests at the present time. The Europeans must continue to possess and enjoy the rights which they have at present. They have got a certain quantum of representation; I should not like to reduce that quantum. As regards Labour, I think Labour ought to be represented also; and generally I agree with what Sir Muhammad Shafi and Sir Tej Bahadur Sapru have said about the representation of special interests. I should like these interests to be represented in both the Houses—the Upper Chamber as well as the Lower Chamber.

As regards (vi), I think the rules which are now observed with regard to the qualifications for membership of the Upper House may, with certain modifications, be maintained. There ought not to be any radical change in those rules. For the Council of State we have got certain rules framed by the Central Government.

Chairman: Under the Act, yes.

Dr. Shafa'at Ahmad Khan: Those rules should, in my opinion, be maintained with slight modifications. We must impose the condition of residence; a person must be resident in the Province which he is going to represent. Besides this, he must possess other qualifications, either property or academic qualifications, or the qualification obtained by holding certain offices. At present, if a person is vice-president of a local body or a Fellow of a University he is an elector for the Council of State, and besides that there are other offices enumerated in the rules.

With regard to disqualification, I think the sections of the two constitutions cited by Sir Sultan Ahmed may be adopted with the necessary modifications. So far as the question of moral turpitude, which was referred to yesterday, is concerned, I think any person who is convicted of a crime involving moral turpitude should not be eligible for the membership of the Upper House. This question cropped up in our local Council for several years, and there were various resolutions on the subject. I think the sense of the members there was in the direction I have indicated.

Mr. Iyengar: That is not the case so far as the Assembly is concerned.

Dr. Shafa'at Ahmad Khan: I am not speaking of the Assembly—I have never been there. I am speaking of the Provincial Legislature; and there there seemed to be agreement that persons convicted of crime involving moral turpitude should not be eligible.

Mr. Iyengar: The Assembly, Lord Chancellor, passed by a very large majority a resolution against imposing any political disqualifications either on the ground of political offences or on that of moral turpitude.

Dr. Shafa'at Ahmad Khan: As regards (vii), I feel that this is a question which should be settled in consultation with the States. I do not wish to say anything on this; but what I feel

is that the question of allegiance to our King-Emperor is quite consistent with allegiance to the Ruler of the Indian State. There is absolutely no conflict of loyalty; and I may add that, so far as the States are concerned, every State which comes into the Federation will retain its sovereignty, and we shall have practically the same principle applied as is applied in other constitutions. Let me quote here one brief sentence from Lord Bryce's "American Commonwealth." This is what he says:—

> "A State commands the allegiance of its citizens and may punish them for treason against it. The authority of a State is an inherent and not a delegated authority."

The Indian States, therefore, retain all their powers with the exception of those powers which are specifically given to the Federal Government; and the question of any conflict does not therefore arise.

With regard to No. (viii), I agree with the recommendation of the Federal Structure sub-Committee that we may have ten members, and not more than ten, in both the Upper and the Lower Houses; but, in some cases, I think that provision should be made for the nomination of experts to both the Houses if and when necessity arises. A provision like this is to be found in other constitutions, especially new constitutions; and I think that it would be very useful if, besides these ten, we have one or two men (I hope not more than two or three) in the Lower Chamber as well as in the Upper Chamber. This has been done very successfully in the Provincial Legislatures. When questions of a very serious, complex, or technical nature have arisen in my own Province, we have had experts nominated. I think that, without that help, we would not have been able to pass a really satisfactory and suitable law both as regards tenants and Universities.

Lord Peel: I do not want to detain the Committee very long. I do not intend at this moment to deal with all these very varied subjects that have been so comprehensively discussed yesterday and to-day, although I have listened with very great interest to the speches that we have just heard from Dr. Shafa'at Ahmad Khan, Mr. Gavin Jones, and Sir Sultan Ahmed. If I do not discuss the points that they have raised, they will understand that it is merely because, at the present moment, I wish to confine myself to one important point. All these other matters that they have raised are in course of discussion, and are perhaps not ripe for settlement. I wish only to say a few words upon this question of direct or indirect election, because I hope that I shall be able to make a contribution to the shaping of opinion upon this subject before final decisions are taken, and because, if I may say so, I think that the case for indirect election of the Lower House of the Assembly has rather gone by default.

I am quite conscious that I have a great weight of opinion against me. I have my colleagues Sir Tej Bahadur Sapru and

Sir Muhammad Shafi. I notice with great interest that these two distinguished leaders of the two great communities are apparently, upon this subject, entirely united. I very much appreciate that sense of unity. I have also Mr. Iyengar against me; and I think that it was Sir Sultan Ahmed who, after regretfully considering the matter, came to the conclusion that, for the Lower House of the Assembly, direct election is necessary. I think that that conclusion was also reached by Mr. Gavin Jones.

I am aware that on two broad principles those gentlemen have supported direct election. The first is that there is no precedent in federal systems for anything but direct election to the Lower Chamber. I am not very much impressed, if I may say so, by the mere question of precedent upon this subject—although, of course, I naturally bow to it in many respects—because it is generally admitted that this whole question of a federal scheme for India has to face problems which are entirely unique. Therefore, is it really wise to draw precedents from other constitutions, when the whole matter is admitted to be entirely different? Secondly, if I may say so, I have never been one of those who are very anxious that, in shaping its constitution, India should necessarily follow Western precedents. Of course there is a great deal to be said for Western precedents, but I think that in many ways India should not be in the least afraid of striking out a new and original path if it is necessary to do so.

The second broad statement that has been made is that public opinion has been rather concentrated on the point of direct election for the Assembly. Of course, like other people, I have to accept the weight and influence of public opinion. I do not say that I necessarily always think that it is right; but the public opinion that has been referred to is really—is it not?—very largely the public opinion that has been directed to the old question of a British Indian representation and a British Indian assembly. Am I not right in saying that it is a little doubtful whether this force of public opinion has really weighed up and seized all the differences that are made in the shaping of the new constitution by the fact that we are moving on to this federal basis rather than on to the old unitary system? I submit—and this is my first point—that public opinion is very often behind the times. The leaders of public opinion, after all, can do a good deal to shape it, and to show that it is not necessarily consistent with the new state of affairs that has arisen. Moreover, I do not think that we are exempted, simply by the mere statement of public opinion running strongly in one direction, from examining the grounds and the reasons upon which it is founded. We are to some extent a collection of experts. Of course, I do not call myself an expert; but there are many experts sitting round this table who are very capable of judging whether this new system fits into the general consideration of a federal system and a federal scheme, which in itself is a very complicated and difficult matter. Therefore, I should like to state one or two reasons which seem to me to favour

the indirect system, arising as it were, out of the very body and nature of the constitution itself.

First of all, I think that one wants to get entirely out of one's head, and to free one's mind from, all the presuppositions, prejudices, and tendencies, which naturally hang about the mind when one is thinking of a unitary constitution. Let us look at this matter solely from the point of view of the federal constitution and the necessary implications that follow from that. I would first of all say that clearly, in a federal constitution, you want to have (and I am looking at it purely from the point of view of the good working of a constitution) harmony between the two Chambers of the central body. You must also get such harmony as you can between the federal and the local Governments and Councils. That, after all, is a condition of the good working of the constitution. It is almost a commonplace—but one must base cases on commonplaces because you get down to facts—that this constitution is arising in a different form from that of any other federation. In previous cases you have had strongly constituted units, in some cases sovereign units, which have combined together in order to create a central constitution, and have given up some of the powers that have been long enjoyed for that purpose for the general good. Of course we all know that that is totally the reverse of what has happened and what is happening in India at the present moment. We all know that there has been this unitary Government, and that the authority that has been enjoyed by the Provinces has been a delegated authority and not an original authority, and that they have been allowed—to put it shortly—to do what the Central Government permitted them to do. They have had no, or very little, original force of their own. Therefore, the whole tradition of people's minds has been, from the political point of view, that they have regarded the Central Government as their master—I will not say with some hostility, but with that critical view with which we often now-a-days regard the exercise of authority over us. They have not regarded the central authority as a being whom they have created themselves, who is their own child, as it were, and whom they ought generally to cherish.

Now, that being so, it seems to me that you ought to secure, if possible, the closest connection between the authoritative expression of authority in the Provinces—that is to say, the Governments and Councils—and these central bodies. And I suggest, therefore, that for that purpose, and to carry out that purpose, the Councils should select their representatives to the Central Assembly—I am assuming, of course, by a method of voting which gives the proper distribution of authority and numbers to the great communities, and so on.

The Provincial Government, therefore—and I do not think it will in the same way regard it if you have direct election—should regard the central authority as its own creation and as really part of itself. We know that, under this constitution, and certainly

in a great many quarters, it is pressed that great powers should be given to the Provinces, and that the authority of the Central Government should be limited to certain specific classes of things, and that they should have authority over them and no more. Now, it is quite obvious that, if you are going to create these powerful and very big local governments—almost countries, with forty or fifty millions of people in them—there is a danger of a centrifugal tendency on the part of these great masses to fly away from the centre unless they are firmly and vigorously anchored to that centre. You must really, therefore, do everything you can to maintain a close tie between the Centre and the Provinces in order to get the proper working of the constitution, and you want to lessen that tendency to break away. In many quarters, of course, it is thought that there should not be too much control or authority exercised by the Central Government over the Provinces; and, if that is so, you should make a more special effort, I submit, in your constitution, to link the Provinces, through their authoritative Governments, and the Central Government together.

Now, you have another very great advantage, I submit again, by this system of indirect election. I am referring for the moment to all these separate electorates that you have for the different great communities. It is admitted that they are rather contrary to what is called democratic theory. It is admitted also that they must exist—anyhow for the present, in order to meet the requirements of the great communities. But I do not think you want to multiply them more than you must necessarily do; and if you can get rid of the necessity of setting up these fresh systems of electorates of separate communities, and so on, in all the Provinces, for the purpose of electing to the Central Assembly, well, I think you will have done something at least to soften, in that respect, the antagonisms between the great communities. And, moreover, there is this consideration. It is certainly the experience of the Western world that, the more you multiply the number of elections, the less interest is taken in those elections; and it is necessary to concentrate, if you can, the interest of people on the smallest possible number of elections. In that way you do good, as it were, to the electoral principle itself.

Now may I state the bearing of what I have said on one or two questions, such as that of finance. We have not discussed finance very much so far, although, of course, that will be one of the governing matters with which we shall have to deal. But it is quite clear that, under the conditions in India, and with the financial system we have got there, and under conditions of federation, there must be the very closest co-operation in matters of finance between the Provinces and the Centre. I am taking both of the matter of the loans question and also of the question of taxes—because however much you choose to separate the heads of taxation, and assign some to the Province and some to the Centre there must be some mutual give-and-take as regards the yield of these taxes, and in many cases, of course, there may be grants to

and from one another as between the Provinces and the Centre. Well, to get harmony in that respect it is clearly necessary again to have the closest relation between the two; and if these gentlemen that you send up are selected by the Provincial bodies themselves, fully aware of the incidence of taxation, you are much more likely, it seems to me, to get harmony, than if you get elected representatives coming straight away from these different constituencies. Moreover, if you are going to have two elected bodies, the elected Provincial Government and the elected Assembly, which must be brought into relation with each other, you are liable to every kind of clashing. Now, it is a commonplace again that elected bodies always differ from one another; it is the law of their being. And one remembers so well, that, in all the discussions in this country as regards putting an electoral element into the House of Lords or having our Second Chamber on an elected basis, we are always told by those who do not like to reform us that there will certainly be clashes between these two assemblies because they are both elected; and that will be the case in India as well. That law applies to the East just as well as to the West. Therefore, in the interests of a general harmony between the two authorities, I submit that you should get away, as it were, if you can, from direct election.

I have argued this, of course, from the point of view of general theory and of the bearing it may have on the federal scheme; and I will only, if I may, notice two objections to that. I think they are stated in the Government of India's Despatch—because the Government of India's Despatch has discussed this question and has not come down, I think, with very great certainty on one side or the other, although it does favour to some extent the direct election system. They suggest, for instance, that by this system of the selection of representatives you will have your Assembly a little too much provincialised—that the men will come there less with what I call the all-India outlook and rather with the provincial outlook. Well, I think there would be some force in that if the Provinces were the little things that they are in some constitutions; but with these great bodies of men, representing populations of thirty, forty and fifty millions of people, I do not think what is called the provincial outlook is likely to be so narrow. Indeed, I am inclined to think that, if a man is a good citizen of Bengal or the United Provinces, he is likely to be, for that purpose, a good Indian. I do not see that there is or can be drawn that distinction between the two things.

The other objection, I think, which they raise—which seems to me a very minor objection—is that perhaps the electorate might not want at once to select a man for their Provincial Council and a man who should also be a member of an electoral college for electing the Central Assembly. Well, I should have thought that, if the people of any district had confidence that a man would represent them in the very difficult and complicated matter of dealing with the affairs that are entrusted to the Pro-

vinces, they would also be quite ready to entrust him with the lesser matter of electing a representative on the Central Assembly.

I pass by, therefore, those two objections as not being of really great importance or relevance; and therefore, if there are great arguments, as I think there are, from the constitutional, federal point of view, for substituting indirect for direct election—and I am not pedantically insisting at the moment upon any particular form of indirect election, because all the different systems are open—there are very great objections to the direct system. I have listened with great respect to what these gentlemen have said about it; but, nevertheless, the consideration of the immense size of these constituencies, and the enormous labour of getting into touch with them, has not been removed from my mind. I do not wish to go into details because gentlemen here know them so well—the great size of these constituencies, especially when that difficulty is enhanced by the necessity of having different electorates for Muslims and Hindus, and the large areas they have got to go over. I was much struck by the remarks of Mr. Iyengar (I think it was), who did not seem to be at all impressed by the difficulties of managing large constituencies. He said one or two things which I did not quite understand in my ignorance. He said you have official organisations which can be said to conduct the elections in a manner which is perhaps not so usual or so easy in a country like England. I do not quite understand that.

Mr. Iyengar: May I hear the passage again?

Lord Peel: It is page 36 of the report of yesterday's proceedings. I do not wish to detain you at the moment; perhaps you would tell us afterwards. I do not quite know what it means. You say that there is no doubt a great expense and trouble, but, nevertheless, the electioneering campaign can be conducted successfully, and there can therefore be no real difficulty with regard to the size of the electorates. Mr. Iyengar no doubt will explain that point about the organisation; but what I submit is this, that that is not so much the main point—as to whether in the stress of an election, with great expense and great trouble and great exhaustion, you are able to get into touch with the whole constituency. What I submit is, that in order to have real representation you must keep in touch with the constituency while you are representing it. Mr. Iyengar has not really dealt with the point that, though you may have been elected by your constituency in this way, you are perhaps never able to see it again or visit the whole of it because of its vast size; and, therefore, as the months and the years go by, there cannot be that close connection between the representative and the constituency which is required. Indeed, the Government of India deal with the same point, and they say that the Indian electorate is held together by agrarian, commercial, professional and caste relations, and it is through these relations that a candidate approaches the electorate. That seems rather to suggest that the representative will deal not with individuals

at all, as we should imagine, but with the heads of great organisations. If that is so, that seems to amount to my point. It seems to come to a sort of secondary system or indirect system of election itself, because the representative approaches the heads of these organisations—like, for instance, the trade union combinations in this country—and does not deal so directly with the electorate. But let me pass by that point for the moment.

After all, the matter will only get worse, because, as the franchise develops, you will have more people in these great constituencies, and the difficulty of being in touch with your electorates will be even greater. Moreover, Mr. Iyengar has admitted the great expense; and surely, in these days when we hear so much of the poverty of the Indian villagers, and of the difficulty India has, I will not say in meeting her obligatinos but, in doing all that should be necessary to do for the development of the country, it is rather unwise—is it not?—to saddle India unnecessarily (if it is unnecessary) with a great expense of elections which might be avoided by the other system. So that, on practical grounds, it seems to me there are also very great objections to the system of direct election.

Now, I have not dwelt solely on these practical grounds. I have fully admitted that there is in this Committee a great deal of opinion against me; but I do urge that it is not quite enough merely to accept a general feeling of public opinion in favour of direct election, which really may be based upon the history of the last ten years and the experience of the Assembly. I would, therefore, strongly urge my colleagues to consider this matter very carefully and fully, not from the unitary point of view, but from the point of view of how far this system, direct or indirect, will further or prevent, will assist or do harm to, that close union between the different elements in the Federation, the Provinces and the Centre, upon which alone the full and safe working of this great constitutional effort can be based.

Mr. Wedgwood Benn: In a matter of this kind, in which no direct British interest is involved, would Lord Peel say that, in the ultimate decision, Indian opinion, if it appeared to be unanimous, should prevail?

Lord Peel: Well, I think Mr. Benn heard. I stated quite frankly and very fully my feeling that I had a great deal of opinion against me. All I wanted to say at this stage was this: I wanted to make a possible contribution to the discussion in order that my view might be weighed up with other views in any final decision that was arrived at.

Sir Muhammad Shafi: If the Provincial Legislative Councils in the Provinces were to be given this right of electing representatives for the Provinces both for the Upper House as well as for the Lower House in the Central Legislature, does Lord Peel not realise that one result would follow—that the majority in each Province, consisting of say 70 or 60 individuals, would have the

right to elect representatives for that Province in both the Upper and the Lower Houses of the Central Legislature, and that the consequences of such a system might be very grave.

Lord Peel: I said, Sir Muhammad, that, so far as I am concerned, I am quite open as to the different methods of indirect election. It does not necessarily follow that members of both Houses should be elected by the Provincial Assembly, although, even if they were elected by the Provincial Assembly, they would be elected with different qualifications and be different kind of men. Of course you could always have the Senate appointed by the Governments, and the representatives in the Assembly appointed by the Councils. Possibly that would bring it into line, too, with the question of the representation of the Princes.

Sir Tej Bahadur Sapru: May I put one question to Lord Peel just for my information. Assuming that separate electorates have got to be given to the Muslims—not that that is my view—how will that end be secured by indirect election to the Provincial Legislatures?

Lord Peel: I was trying, as I think you heard, to eliminate one set of separate elections and separate electorates and all the enormous trouble and expense that that would involve. I also mentioned, I think, that the rights of the great communities must be secured, because there would be separate constituting bodies in each Provincial Council who would presumably elect proportionately to their own numbers—to the numbers of the particular community in the Provincial Council. I mean to say, supposing there were 15 Muslims on a Provincial Council, they would obviously have the right of nominating or choosing so many representatives to the Central body.

Sir Sultan Ahmed: Can you suggest any other method of indirect election apart from the Provincial Legislatures?

Lord Peel: Other suggestions have, of course, been made. There was a suggestion which I believe Lord Lothian favoured; and Lord Zetland put forward another scheme. There are, of course, a great many different schemes which can be put forward for securing the same end. I did not want to be too long—though I am afraid I have been a little too long—and so I was dealing with the principle of the thing.

(The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.)

Mr. Gandhi: Lord Chancellor. It is not without very great hesitation that I take part in this debate on Head 2; and, before I proceed to deal with the several points that are noted down here for discussion, I should like, with your permission, to disburden myself of an oppressive feeling that has been growing on me ever since Monday. I have watched with the greatest attention the discussions that have taken place in this Committee. I have endeavoured to study, as I have not done before, the list of the

Delegates; and the first feeling of oppression that has been coming upon me is that we are not the chosen ones of the nation which we should be representing, but we are the chosen ones of the Government. I see, as I study the list and as I know the different parties and groups in India from experience, some very noticeable gaps also; and so I am oppressed with a sense of unreality in connection with our composition. My second reason for feeling a sense of unreality is that these proceedings seem to me to be interminable and to be leading us practically nowhere. If we go on at this rate I do not know that we shall proceed beyond having discussed the various points raised before this Committee threadbare.

I would therefore, first of all, Lord Chancellor, tender my deepest sympathies to you for the very great patience—and, may I add, the unfailing, courtesy—with which you are handling us; and I really congratulate you upon the great pains that you are taking over the proceedings of this Committee. I hope that, at the end of your task and of our task, it will be possible for me to tender my congratulations on having enabled us, or even compelled us, to show some tangible result.

May I here lodge a gentle, humble complaint against His Majesty's advisers? Having brought us together from over the seas, and knowing, as I take it they do know, that we are all of us without exception busy people, as they themselves are, and that we have left our respective posts of duty—having brought us together, is it not possible for them to give us a lead? Can I not, through you, appeal to them to let us know their mind? I should be delighted—and I feel that that would be the proper procedure, if I may venture to say so in your presence—if they would bring forward concrete proposals for taking our opinion. If some such thing was done I have no doubt that we should be able to come to some conclusions, good or bad, satisfactory or unsatisfactory; but if we simply resolve ourselves into a debating society, each member of which gives an eloquent discourse upon the points severally raised, I do not think that we shall be serving or advancing the purpose for which we have been brought together. It seems to me that it might be profitable, if it is open for you, to appoint a sub-Committee to give you some points for conclusion so that our proceedings may be terminated in fair time.

I have simply ventured to throw out these suggestions for your consideration, and for the consideration of the members. Perhaps you will kindly bring them to the notice of His Majesty's advisers for their consideration. I do want them to guide us and to give us a lead, and to place their own cards on the table. I want them to say what they would do supposing that we appointed them as the arbiters of our destiny. If they would be good enough to seek our advice and opinion, then we give them our advice and opinion. That would be, in my opinion, really a better thing than this state of hopeless uncertainty and endless delay.

Having said that, I shall venture to offer a few remarks upon Head 2. There I share the difficulty that faced Sir Tej Bahadur Sapru. If I understood him rightly, he said that he was embarrassed in that he was called upon to deal with several sub-heads when he did not know what the franchise actually would be. There is that difficulty that stares me in the face in common with him; but there is an additional difficulty that stares me in the face. I placed before the Committee the mandate of the Congress, and I have to discuss every one of the sub-heads in terms of that mandate. Therefore on certain of these sub-heads I would have to offer suggestions or my opinion in terms of that mandate; and if the Committee does not know what it is sailing for, naturally the opinion that I may offer would be of really no value to it. The opinion would be of value only in terms of that mandate. My meaning will be clear when I come to examine these sub-heads.

With reference to sub-head (i), whilst my sympathies, broadly speaking, are with Dr. Ambedkar, my reason is wholly with Mr. Gavin Jones and Sir Sultan Ahmed. If we were a homogeneous Committee, whose members were entitled to vote and come to a conclusion, I should then sail a very large distance with Dr. Ambedkar; but such is not our position. We are an ill-assorted group, each member of which is independent of the other and therefore entitled to give his or her views unfettered by any common rule. Hence, we have no right, in my humble opinion, to say to the States what they shall do and what they shall not do. Those States have very generously come to our assistance and said that they would federate with us, and perhaps part with some of their rights which they might otherwise have held exclusively. That being so, I could not but endorse the opinion given by Sir Sultan Ahmed, which was perhaps emphasised by Mr. Gavin Jones, that the utmost that we can do is to plead with the States, and show them our own difficulties. At the same time I feel that we have to recognise their special difficulties also. Therefore I can only venture a suggestion or two to the great Princes for their sympathetic consideration; and I would urge this, being a man of the people, from the people, and endeavouring to represent the lowest classes of society—I would urge upon them the advisability of finding a place for these also in any scheme that they may evolve and present for the acceptance of this Committee. I feel, and I know, that they have the interests of their ryots at heart. I know that they claim jealously to guard their interests; but they will, if all goes well, more and more come in contact with popular India, if I may so call British India; and they will want to make common cause with the inhabitants of that India, as the inhabitants of that India would want to make common cause with the Princes' India. After all, there is no vital, real division between these two Indias. If one can divide a living body into two parts, you may divide India into two parts. It has lived as one country from time immemorial, and no artificial boundary can possibly divide it. The Princes, be it said to their credit, when they declared themselves frankly and

courageously in favour of federation, claimed also to be of the same blood with us—claimed to be our own kith and kin. How could they do otherwise? There is no difference between them and us except that we are common people and they are—God has made them—noblemen, Princes. I wish them well; I wish them all prosperity; and I also pray that their prosperity and their welfare may be utilised for the advancement of their own dear people, their own subjects. Beyond this I will not go; I cannot go. I can only make an appeal to them. It is open to them, as we know, either to come into the Federation or not to come into it. It is up to us to make it easy for them to come into the Federation. It is up to them to make it easy for us to welcome them with open arms. Without that spirit of give-and-take, I know that we shall not be able to come to any definite scheme of federation; or, if we do, we shall ultimately quarrel and break up. Therefore, I would rather that we did not embark upon any federal scheme, than that we should do so without our full hearts in the thing. If we do so, we should do so whole-heartedly.

Then, with reference to the second head, I see that the second head has really been considered in connection with disqualifications —whether there should be any disqualifications or not. Although I claim to be a full-fledged democrat, I have no hesitation in saying that it is entirely consistent with the rights of the voter to have some disqualifications attaching to candidature as also some disqualifications which would unseat a member. What they should be I do not wish to go into at the present moment; I simply say that I would endorse whole-heartedly the idea and the principle of disqualification. The words " moral turpitude " do not frighten me; on the contrary I think it is a good expression. Of course, any words that we may choose with the greatest deliberation will still cause difficulties; but what are judges for if they are not there to surmount them? In case of difficulty, judges will come to our assistance and will say what comes under the term " moral turpitude " and what does not; and if, perchance, a person like myself, offering civil resistance, was considered guilty of " moral turpitude," I should not mind. It may be that some people may have to suffer hardship, but on that account I am not disposed to say that there shall be no disqualifications whatsoever, and that, if there were any, it would be an encroachment upon the right of the voter. If we are to have some test or some age limit, I think we should have some character limit as well.

Then the third point is as to indirect and direct election. I wish Lord Peel were here to find me in substantial agreement with him so far as the principle of indirect election is concerned. I do not know—I am talking simply as a layman—but the words " indirect election " do not frighten me. I do not know if they have any technical meaning; if they have, I am wholly unaware of it. I am presently going to say what I mean. Whether it is called " direct election " or " indirect election," I would certainly go round and plead for it, and probably get a large body of public

opinion in favour of that method of election. The method I am about to suggest is necessary because I am wedded to adult suffrage. Somehow or other, Congressmen swear by it. Adult suffrage is necessary for more reasons than one; and one of the decisive reasons to me is that it enables me to satisfy all the reasonable aspirations, not only of the Mussulmans, but also of the so-called "Untouchables"—of Christians, of labourers and all classes. I cannot possibly bear the idea that a man who has got wealth should have the vote but that a man who has got character, but no wealth or literacy, should have no vote; or that a man who works honestly by the sweat of his brow day in and day out should not have the vote for the crime of being a poor man. It is an unbearable thing; and having lived and mixed with the poorest of the villagers, and having prided myself on being considered an Untouchable, I know that some of the finest specimens of humanity are to be found amongst these poorer people, amongst the very Untouchables themselves. I would far rather forego the right of voting myself than that this Untouchable brother should not have the vote. I am not enamoured of the doctrine of literacy—that a voter must at least have a knowledge of the three Rs. I want for my people a knowledge of the three Rs; but I know also that, if I have to wait until they have got a knowledge of the three Rs before they can be qualified for voting, I shall have to wait until the Greek Kalends, and I am not prepared to wait all that time. I know millions of these men are quite capable of voting; but if we are going to give them all the vote it will become very difficult, if not absolutely impossible, to bring them all on the voters' list and have manageable constituencies.

I do share Lord Peel's fear that, if we have unwieldy constituencies, it is not possible for the candidate to come in personal touch with all this multitude of people or to keep touch with them from time to time and to take their opinion and so on. Although I have never aspired to legislative honours, I have had something to do with these electorates and I know how difficult it has been. I also know the experiences of those who have been members of these legislative bodies. We in the Congress, therefore, have evolved a scheme, and though the Government of the day have accused us of insolently setting up a parallel government, I would like to subscribe to that charge in my own fashion. Though we have not set up any parallel government, we certainly aspire some day or other to displace the existing Government and, in due course, in the course of evolution, to take charge also of that Government.

Having been for the last fourteen years a draftsman of the Indian National Congress, and having been for nearly twenty years draftsman for a similar body in South Africa, you will allow me to share my experience with you. In the Congress constitution we have practically adult suffrage. We impose a nominal fee of four annas a year. I would not mind imposing that fee even now. I again share Lord Peel's fear that, in our poor country, we run the risk of having to spend a lot of money merely upon managing

our elections. I would avoid that, and therefore I would even collect this money. I am open to conviction that even four annas would be a grave burden, in which case I would waive it; but in any case in the Congress organisation we have that.

We have also another distinguishing feature. So far as I know the working of voting systems, the registration officer has to put on the voters' list all those who he considers are entitled to the vote; and hence, whether a man wishes to vote or not—whether he wants his name to come on the list or not—he finds his name there. One fine morning I found my name on the voters' list in Durban in Natal. I had no intention of affecting the legislative position there and I never cared to place my name on the roll of voters; but when some candidate wanted my vote for himself, he drew my attention to the fact that I was on the voters' list; and since then I have known that is how voters' lists are prepared. We have this alternative, that he who wants the vote can have it. It is therefore open to those who want the vote, subject to the condition regarding age and any other condition which all can fulfil, to have their names, without distinction of sex, on the voters' list. I think a scheme of that character would keep the voters' list within a manageable compass.

Even so we would have millions, and something is needed to link the village with the Central Legislature. We have something analogous to the Central Legislature in the Indian Congress Committee. We have also provincial bodies analogous to the Provincial Legislatures, and we have also our own tin-pot legislation and we have also our administration. We have got our own executive. It is perfectly true we have no bayonets to back it, but we have something infinitely superior to back our decisions and to get our people to conform to those decisions, and we have hitherto not found insurmountable difficulties. I do not say that we have been able always to exact obedience fully in all circumstances; but we have been able to scrape through all these forty-seven years, and year after year this Congress has grown from height to height. Let me tell you that our provincial councils have got full authority to frame bye-laws in order to govern their elections. The corner-stone, namely the qualifications for voters, they cannot change at all; but all other things they can have in their own way. Therefore I will take only one Province where this thing is done. There the villages elect their own little committees. These committees elect the taluka committees (taluka is a sub-district), and these taluka committees again elect the district councils, and the district councils elect provincial councils. The provincial councils send their members to the central legislature—if one may so dub this all-India Congress Committee. That is how we have been able to do it. If here we do some such thing, I do not mind. But take another way. We must remember that we have 700,000 villages. I believe that the 700,000 includes the Princes' India also. I speak subject to correction. We have perhaps 500,000 or a little more in popular India. We may have these 500,000 units. Each unit

would elect its own representative, and these representatives would be the electorate that would elect, if you will, representatives to the Central or the Federal Legislature. I have simply given you an outline of the scheme. It can be filled in if it commends itself to your attention. If we are going to have adult suffrage I am afraid that we shall have to fall back upon a scheme somewhat after the style that I have suggested to you. Wherever it has been working, I can only give you my evidence that it has worked with excellent results, and there has been no difficulty in establishing contact through these respective representatives with the humblest villager. The machinery has worked smoothly; and, where people have worked it honestly, it has worked expeditiously, and certainly without any expense worth naming. Under this scheme I cannot conceive the possibility of a candidate having to spend Rs. 60,000 over an election, or even one lakh. I know of some cases in which the expenses have run to one lakh of rupees—in my opinion, an atrocious figure for the poorest country in the world.

Whilst I am upon this, I would like to give you my opinion, for what it may be worth, in connection with bicameral Legislatures. I find myself, if it would not offend your susceptibilities, in Mr. Joshi's company. I am certainly not enamoured of and I do not swear by two Houses of Legislature. I have no fear of a popular Legislature running away with itself and hastily passing some laws of which afterwards it will have to repent. I would not like to give a bad name to, and then hang, the popular Legislature. I think that a popular Legislature can take care of itself; and, since I am now thinking of the poorest country in the world, the less expenses we have to bear the better it is for us. I do not for one moment endorse the idea that, unless we have an Upper Chamber to exercise some control over the popular Chamber, the popular Chamber will ruin the country. I have no such fear; but I can visualise a state of affairs when there can be a battle royal between a popular Chamber and an Upper Chamber. Anyway, whilst I would not take up a decisive attitude in connection with it, personally I am firmly of opinion that we can do with one Chamber only and that we can do with it to great advantage. We will certainly save a great deal of expense, if we can bring ourselves to believe that we shall do with one Chamber. I find myself in agreement whole-heartedly with Lord Peel that we need not worry ourselves about precedents. We shall set a new precedent ourselves. After all we are a continent. There is no such thing as absolute similarity between any to human living institution. We have our own peculiar circumstances, and we have our idiosyncrasies. I do feel that we shall have in many ways to strike out a new path for ourselves irrespective of precedents. Therefore I feel that we would not go wrong if we tried the method of having one Chamber only. Make it as perfect as human ingenuity can, by all means; but be satisfied with only one Chamber. Holding these views, I do not need to say more about sub-heads (iii) and (iv).

I come to sub-head (v)—representation by special constituencies of special interests. I here speak for the Congress. The Congress has reconciled itself to special treatment of the Hindu-Muslim-Sikh tangle. There are sound historical reasons for it but the Congress will not extend that doctrine in any shape or form. I listened to the list of special interests. So far as the Untouchables are concerned, I have not yet quite grasped what Dr. Ambedkar has to say; but of course the Congress will share the honour with Dr. Ambedkar of representing the interests of the Untouchables. They are as dear to the Congress as the interests of any other body or of any other individual throughout the length and breadth of India. Therefore I would most strongly resist any further special representation. Under adult suffrage, certainly, labour units and so on, do not require any special representation; landlords most decidedly not, and I will give you my reason. There is no desire on the part of the Congress, and there is no desire on the part of these dump paupers, to dispossess landlords of their possessions; but they would have landlords to act as trustees for their tenants. I think that it should be a matter of pride for the landlords to feel that their ryots, these millions of villagers, would prefer them as their candidates and as their representatives than others coming from other parts or someone from among themselves. Therefore what will happen is that the landlords will have to make common cause with the ryots; and what can be nobler, what can be better, than they should do so? But, if the landlords insisted on special treatment and special representation in either Chamber, if there are two Chambers, or in the one popular Chamber, I am afraid that they would be really throwing the apple of discord into our midst; and I am hoping that no such claim will be put forward on behalf of the landlords or any such interest.

Then I come to my friends the Europeans, whom naturally Mr. Gavin Jones claims to represent. But I would suggest to him humbly that hitherto they have been the privileged class—they have received the protection that this foreign Government could give, and they have received it liberally. If they would now make common cause with the masses of India they would not be afraid, as Mr. Gavin Jones said he was afraid. He read from some document: I have not read it. It may be that some Indians also may say, "Oh, yes, if Europeans, Englishmen, want to be elected by us we are not going to elect them;" but I would undertake to take Mr. Gavin Jones throughout the length and breadth of India and show to him that he will be preferred to an Indian if he will make common cause with us. Take Charlie Andrews. I assure you that he will be elected a delegate in any constituency in India without the slightest difficulty. Ask him whether he has not been received throughout the length and breadth of India with open arms. I could multiply those instances. I have appealed to the Europeans to try once in a while to live on the good will of the people, and not seek to have their interests specially safeguarded or protected. If I might venture a suggestion, safeguards would be

the wrong way to go about the business. Let them live in India as one of us—that is how I would want them to live, and how I would beseech them to live. In any case, I do feel that, in any scheme that the Congress can be party to, there is no room for the protection of special interests. The special interests are automatically protected when you have got adult suffrage.

So far as the Christians are concerned, if I may cite the testimony of one who is no longer with us, I know that he said: "We want no special protection." And I have letters from Christian organisations saying that they want no special protection, that the special protection that they would get would be by right of humble service.

Then, are any special qualifications to be laid down for eligibility for membership of the Upper House? As you know my opinion about the Upper House, I do not need to give any opinion about that.

Now I come to a very delicate point—that is, the Oath of Allegiance. I would not be able to give any opinion just now, because I want to know what the status is to be. If it is to be complete freedom, if it is to be complete independence for India, the Oath of Allegiance naturally will be of one character. If it is to be a subject India, then I have no place there. Therefore it is not possible for me to-day to give any opinion upon the question of the Oath of Allegiance.

Then the last question: what provision, if any, shall be made in each Chamber for nominated members? Well, in the scheme that the Congress men have adumbrated there is no room for nominated members. I can understand experts coming, or men whose advice might be sought. They would give their advice and they would retire. I cannot see the slightest justification for clothing them with votes. Votes are given only by popular representatives if we want to have a democratic institution undiluted. Therefore I cannot possibly endorse a scheme where there are nominated members.

But that brings me back to sub-head (v). We have provision in the Congress regarding special cases. We want women to be elected, we want Europeans to be elected, we certainly want Untouchables to be elected, we want Christians to be elected; and I know well enough that these are very large minorities. Now, supposing that the constituencies so misbehave themselves as not to elect women or Europeans or Untouchables or, say, landlords, and they do not do so for no reasonable justification whatsoever, I would have a clause in the constitution which would enable this elected Legislature to elect those who should have been elected, but have not been elected. Perhaps I have not been able to express my meaning clearly, so I will give you an illustration. We have in one provincial Congress council exactly a rule of this character. We have thrown the burden upon the constituencies of electing so many women, so many Mussulmans and so many Untouchables to

the council; and, if they fail to do so, the election is then conducted by this elected body. They elect those who have been unjustly left out by the electorate. I would welcome some such saving clause in order that constituencies may not misbehave themselves; but, in the first instance, I would trust the constituencies to elect all classes of people and not become clannish or be caste-ridden. The Congress mentality, I may assure you, is wholly and absolutely against caste and against the doctrine of superiority and inferiority. Congress is cultivating a spirit of absolute equality.

I am sorry for having taken so much of your time, but I am thankful to you for having given me this indulgence, Lord Sankey.

(*Lord Sankey left the Chair, which was taken by Lord Lothian.*)

Sir Sultan Ahmed: I have a question I want to put to Mr. Gandhi, if you will permit me to do so. He suggested that, if the requisite number of people for any particular community were not elected, then he would have the power of election given to some other body.

Mr. Gandhi: No, it is those people who are elected who will elect.

Mr. Iyengar: Co-option.

Mr. Gandhi: Call it co-option. As a layman, you would not expect me to use accurate language, please.

Sir Sultan Ahmed: But does that not imply that there will be reservation of seats for communities?

Mr. Gandhi: It need not. As I say, there can be a clause of that kind, without specifying the number; but I do not mind even the numbers being specified. And you will please remember that that did not refer to the Musalmans at all.

Sir Sultan Ahmed: No, I am not talking about Mussulmans at all; I am talking about those four classes whom you mentioned: Commerce, Labour, Landlords, and so on. It is nothing to do with Mussulmans at all; they do not come into it.

Mrs. Subbarayan: May I also respectfully ask Mahatma Gandhi a question? You referred to the position of women. Suppose the Central Legislature does not have any women on it, then you will have a clause to allow that Legislature to co-opt women?

Mr. Gandhi: I would boycott that Legislature. A Legislature that will not elect a proper share of women will be boycotted by me, and I speak for the Congress also. There would certainly be full protection. How it can be brought about is incredibly simple; but I would be no party to a setting up of special constituencies.

Mrs. Subbarayan: Not special constituencies; but supposing women do not come in by general election, then you will allow the Central Legislature to elect some women?

Mr. Gandhi: Then they have got to enjoy the honour of being elected by the elected legislators, before they can conduct their proceedings.

Sir Akbar Hydari: May I ask one question. With regard to the 500,000 villages or electorates, would they elect first to the Provincial Council and then the Provincial Councils elect to the Federal Legislature; or would you have separate electorates for the Provincial Council and the Federal Legislature?

Mr. Gandhi: May I suggest, Sir, in the first instance, in answer to Sir Akbar Hydari, that if you accept the general outline of the scheme that I have adumbrated, all these things can really be settled without the slightest difficulty; but the special question that Sir Akbar has asked I will answer by saying that the villages will be electing candidates to no legislature in the scheme that I was trying to propound, but they will elect the electors, the voters—the villagers will elect one man, and say " you will exercise the vote for us ". He will become their agent for the election either to the Provincial Legislature or to the Central Legislature.

Sir Akbar Hydari: Then that man would have a dual capacity, either to elect a man to the Provincial Council or to the Central Legislature?

Mr. Gandhi: He can have that; but to-day, to be relevant, I was talking simply to the election to the Central Legislature. I would certainly apply the same scheme to the Provincial Legislature.

Sir Akbar Hydari: Would you rule out any idea of the Provincial Legislature so elected electing to the Federal Legislature?

Mr. Gandhi: I do not rule it out but that does not commend itself to me. If that is the special meaning of " indirect election " I rule it out. Therefore I use the term " indirect election " vaguely. If it has any such technical meaning, I do not know.

H.H. The Maharaja Gaekwar of Baroda: That is the line on which we are working.

Mr. Gandhi: I know Your Highness's scheme.

H.H. The Maharaja Gaekwar of Baroda: The object being that each individual, irrespective of class or creed, should be able to vote.

Mr. Gandhi: Yes, I know.

Sir Provash Chunder Mitter: Sir, Subject to the usual reservations, which I need not repeat, I will offer a few remarks. With regard to sub-heads (i) and (ii), I am of opinion that these are matters which are primarily for Their Highnesses. I do not say that these are matters which are absolutely for Their Highnesses, but I do say these are matters which are primarily for Their Highnesses. I will explain what I mean. Sir Tej Bahadur Sapru and others have placed before Their Highnesses certain aspects of the question. We are going to work together, and it is desirable that Their Highnesses should know what British Indian representatives think. It is equally desirable that the British Indian representatives, after having made their suggestions, should give every weight to Their Highnesses' opinion as to how they are going to meet us.

We must remember, Sir, that our object is to work together. Why?—For the peace and happiness of India. And if our object be to work for the peace and happiness of India, there must be give and take. We have made our representations to Their Highnesses that we would like to have, for example, some sort of elective system for the Lower House. We may expect that Their Highnesses will give due weight to that opinion. It may be that, in some States, our suggestion cannot be carried out, while it may be that in some other States it can be carried out to a certain point; but, if we both desire to work together, I think we ought to leave it at that. Just as I for one (and I am sure most of us) would object to Their Highnesses dictating as to how British India should be represented, in the same way, if we try to place ourselves in their position, we ought to be able to agree that there should be mutual understanding and no idea of dictation.

I think, Sir, that that is all I need say about sub-head (i) (*a*). With regard to general points involved in sub-head (i) (*b*) and sub-head (ii), I say it may be that the method of nomination will have to be adopted by certain States. It may be that some method intermediate between nomination and some form of election will have to be adopted. But let us not forget why we are federating. One great object of federation is to bring about an improved status for our common Motherland. Let us suppose a representative of India goes to the League of Nations under present conditions, and let us suppose that a representative of India goes to the League of Nations in future, representing a federated India. Cannot that latter representative hold up his head much higher than any representative, however exalted, however able, however truly representative he may be, who goes at the present moment? If one of the vital objects of this Federation be to exalt our common Motherland, I think, by trying to quibble, by trying to create differences where differences should not exist, we shall add difficulties to this already difficult problem. From that point of view again I would appeal to my colleagues from British India, as I would appeal to Their Highnesses, that there be more give and take—more understanding—for the common good of our common Motherland.

I will next say a few words about sub-head (iii). I am of opinion that, for many reasons, election to the Upper House by the indirect method is *primâ facie* commendable; but, as Sir Tej Bahadur Sapru points out, that indirect election to the Upper House may be by members of the Provincial Legislature or it may be a more extended electorate, namely the members of the Provincial Legislature along with members of local bodies, such as district boards and municipalities, and—if I may just throw out a suggestion—even the Senates of Universities.

As I say, a system of indirect election to the Upper House may be desirable; and, if you have a system of indirect election to the Upper House, you are likely to have an Upper House where the popular element will be represented. I hope the members of the

British Delegation will not misunderstand me when I say that in that way we may hope to avoid, in future, the clash of interests which has marked the history of the Upper House and Lower House in this country. As Sir Tej Bahadur Sapru points out, you cannot have an elected Upper House and deny them certain rights. If you do deny them certain rights then perhaps the object of an Upper House has gone. On the other hand, if you do give them certain rights, then there should be a popular element or else conflicts are almost inevitable. But, having that popular element, you should also have other points before you, namely, experience and age; and, if I may say so, your aim should be, if possible, to have an Upper House which represents the national interest rather than party interests. If that be our ideal of an Upper House, let us not think of the House of Lords in this country. Let us think rather of some of the more modern Upper Houses and adapt them to conditions such as prevail in our country. If we are successful in adapting them in this way, I think we shall find that much of the prejudice against an Upper House, which exists among democrats at present, will rapidly disappear. In this connection I would incidentally refer to one of our great difficulties, namely, our communal question. A true Upper House, in which there will be the better mind of the Muslims and the better mind of the Hindus, will mean, I am sure, that the communal question will lose many of its present difficulties.

I have supported and I do support indirect election; however, on the understanding that the kind of picture that has been presented to us will be the final picture. If, on the other hand, that picture is changed in important details—if, on the other hand, the Lower House be a Lower House of a different character—then, perhaps, we may have to think of an Upper House chosen by direct election. But, in any case, that direct election should not be of the very limited character of that of our present Council of State. I do not propose to develop that point, because I do hope that the picture which was presented last year—the picture which has brought Mahatma Gandhi and Pandit Malaviya to this Conference—will ultimately hold good.

Now, I have a suggestion to offer, not only with regard to this point, but also in regard to certain points which will arise under the next heading. We in this Committee can make only general observations. It will be extremely desirable to have the whole matter properly investigated by a suitable committee. This committee, I suggest, should be a small business-like committee of officials and non-officials, which should gather materials and work out details on the lines of the main ideas expressed here. After the members of this Federal Structure Committee have discussed this question and indicated some general conclusions, His Majesty's Government—whatever that Government may be at that time—will, I am sure, give weight to its recommendations and suggestions; but then the details will have to be worked out, and the details are all-important.

Either at that stage or at a later stage, the small committee that I have suggested should be appointed. Parenthetically, I would observe that, even in the working out of those details, we should not follow the mistake made in connection with the Montagu-Chelmsford Reforms. Then some official, or officials, drew up Devolution Rules, which were accepted by Government without consulting the representatives of those non-officials who had to work under the Rules. This committee should be charged with the duty of gathering facts, and may well have alternative terms of reference—one of the alternatives being on the basis of direct election, and another alternative being on the basis of indirect election, treating the village as a unit.

I now wish to say a few words with regard to the next sub-head; and, with regard to this sub-head, I will begin by making some general observations. Self-government will be a mere shadow of self-government if ninety per cent. of India's people, who live in villages, do not get a chance of having an effective voice in the elections. It is evident that, where a constituency consists of villages and also of municipal towns, the votes of the municipal towns prove a very important factor. If you take the present territorial constituencies, at the one extreme you have as large a territorial unit as 80,000 or 60,000 square miles. To call it a territorial unit for the purpose of returning a member seems, in my humble judgment, a misnomer; but it is nothing uncommon to find 10,000 or 15,000 square miles as your territorial unit. Within these territorial units we often have a number of towns, and there are also scattered villages. Out of the seven lakhs of India's villages, more than five and a half lakhs have a population of only 500 or less each. In my Province, which I know better than any other Provinces, there are 85,000 villages. Of these, nearly 60,000 villages have each a population of less than 500, the total population living in them being only 11,000,000. On the other hand, in less than 3,000 villages, with a population of 2,000 to 5,000, more than 8,000,000 reside. Taking, as an example, the joint constituency of Rajshahi and Chittagong, the area is 30,000 square miles, and there are a number of towns. Supposing that three candidates are fighting for being elected, naturally each one of them will try to get the votes in the municipal towns, where they can go more easily. Naturally they can bring to the poll a large number of voters from municipal towns; but what happens to the 90 per cent. who live in villages? In my Province 94 per cent. live in villages. Do they get any franchise? We may think that they have a franchise, but their votes are not the determining factor. In a village consisting of 500 people, less than half are over 21. Therefore, in every election it is the votes of the towns which prove effective. For that reason, I say, it is a pure delusion when we speak of self-government for India.

Therefore, the first proposition that I would like my colleagues on this Committee to consider, and to consider very carefully, is the question of separating constituencies into urban and rural. We

have already the beginnings of that. In my Province, for example, Calcutta, has a separate constituency for returning a non-Muhammadan member to the Legislative Assembly. A number of towns around Calcutta—the suburbs of Calcutta—have a separate constituency for returning another non-Muhammadan member to the Legislative Assembly. There is yet another urban constituency. Apart from those three urban constituencies, in the rest of the Province the rural voters and the urban voters are to be found in one constituency. I see opposite me my esteemed friend, Mr. K. C. Neogy, who has come here in another capacity. He represents the Dacca Division. I am asking, what attention does he pay to the voters in villages, where the adult population is 250 and the number of voters is perhaps 5, and which he can only approach after travelling for three days, as compared with those in a town like Dacca, with a population of about 2 lakhs? It must be remembered that, in many parts of East and North Bengal, one has to travel in boats and other kinds of river craft. Therefore—if I may use the colloquialism which the Lord Chancellor uses so often—if we get down to brass tacks, we must admit that rural and urban areas should be separated into different constituencies.

There is another question which should be examined in this connection. I think that we are more or less agreed—or, if we are not agreed, the recommendation of the Federal Structure sub-Committee last year was—that the total number of members of the Lower House should be 300. Let me assume that, barring special interests, if special interests be retained, there will be somewhere about 200 or a few more members for British India. At the present moment we have only 105. That means that you can reduce these big territorial constituencies by about half; but, if you give separate representation to urban areas, as I think that you should, then the rural constituencies will be even more difficult to form. What, then, is the remedy? One remedy may be to have 500 members altogether for the Legislative Assembly for British India alone.

Sir Maneckjee Dadabhoy: We are not discussing at present sub-head (i).

Sir Provash Chunder Mitter: I am dealing with sub-head (iv). One remedy may be to adapt the suggestion that was made in the Nehru Report. Whether I agree with the suggestion about adult franchise or not, is another matter. As I believe in frankness I will say at once that, personally, I do not agree with it. However, if you take the 500 members of your Legislative Assembly for British India alone, that will mean that the average size of the constituencies will be about 2,300 square miles. In the Nehru Report, however, there was no question of Their Highnesses coming in. If you have to provide seats for the Indian States, you will have to allow 200 or 250 for them, and then the total strength of the Legislature will be 700 or 750, which, for other reasons, is likely to be too big. If you take 200 or thereabouts as the total size of your British Indian section of the Legislature, then either you will have to submit to very wide areas, which will result in

the candidate and elector having no touch with each other, or you will have to think of something else. In this connection, I may point out that the Federal Structure sub-Committee did consider, and unanimously reject, the question of indirect election. If I may say so, I would have rejected the question of indirect election of the type which was before the public of India. One type of indirect election was suggested by the Simon Commission's Report, namely, that the local legislature should be the electing unit. I have no hesitation in saying that that is thoroughly unacceptable to every section of Indian public opinion. Another type of indirect election with which we in India were familiar was the system that obtained under the Minto-Morley Reforms, where members for local bodies were the electors. The total number of such electors, however, was very small. Experience proved that these electoral colleges under the Minto-Morley scheme, with a small number of electors, were unsatisfactory. The Indian public, therefore, had no hesitation in rejecting that system of indirect election. The suggestion made by Mr. Gandhi, if properly worked out and duly considered, may throw a new light upon the matter. Again I will illustrate that suggestion from my Province. There are 85,000 villages. If you could give to the primary voters in these villages some sort of adult franchise, and ask them to nominate one member to represent the village, as Mr. Gandhi suggested, you would be following a system with which we in India are very familiar. Speaking for myself, I would allow each village unit to elect 5 to 10 voters. We are familiar with the system of Punchayat, which means a body of 5. We—the Indian members at any rate—know what the village communities in India mean to the country. It is a mistake to think that the village communities in India were like your parish councils or even like your borough of county councils. These village communities in India were not merely concerned with the health and amenities of the villages. True, there was no ballot box. But the Punchayets were charged with the preservation of peace and the fiscal administration of the villages. They looked after the protection of the villages; they looked after the collection of the revenue which was to be handed over to the Government or the Ruling Prince. They were, in that sense, although there was no ballot box, an example of true self-government. When dynasties tumbled, when legions thundered by, it was these village communities which kept up civilisation in the villages of India. By all means, therefore, study the example of other countries. Study the systems in Australia and Canada and European countries; but assimilate the result of your studies and apply them to conditions in India. If you truly assimilate the result of your studies, and if you provide 5 to 10 voters for each of these villages as a unit, then, speaking for India as a whole, there may be 3 millions (if you allow 5 each) or 6 millions (if you allow 10 each) of voters for rural areas alone. Then instead of the present one and one-eighth millions you will have a far more representative system of election. The system of indirect election has never been considered by the Indian public; and, in view of the course advocated by Mahatma

Gandhi, this system ought to have a fair chance of being properly considered. I do not for a moment suggest that this idea should be accepted all at once. I do suggest that, for the committee that I have mentioned, one of the terms of reference should be indirect election, on the lines indicated, at any rate for the villages if not for the towns.

I may say, Sir, that I have for a long time held the view that this system of election is better suited to Indian conditions. Last year, when I had the honour and the privilege of serving on the Franchise sub-Committee, I put forward this view. The reason why this view was so prominent in my mind was that I had a good deal to do with four General Elections in my Province. Two of these General Elections I had to conduct under the immediate leadership of that great Nationalist, Surendranath Banerji; and I found that, in every election, from whatever party the candidate came—and even those who did not belong to any party but called themselves Independents—all concentrated their attention on securing the votes of the town population. They neglected the votes of the villages, because these votes were so ineffective. "Well," we glibly say, "let there be direct election"; but I should like to know more details of every Province, as to what would be the effect of such election, what will be the total area of each electorate, what will be the total number of voters, and how will the strength of the urban and the rural voters compare. I would also like to have more details as to the franchise. Therefore, all I am pleading for is that we should not decide in advance, without investigation of the facts, but we should decide when we have more materials, more facts. I see around me some of the best lawyers in India, and I think I can always remind them that, if we want to decide properly, we should not ignore the facts; we should not attempt to apply the law before we know what our facts are.

I will now refer to the next point, namely, the question of the representation of special interests. I agree with the unanimous recommendation arrived at by the Federal Structure sub-Committee in the last Session. It says:

> "Opinion was unanimous in the sub-Committee that, subject to any report of the Minorities sub-Committee, provision should be made for the representation, possibly in both Chambers, and certainly in the Lower Chamber, of certain special interests, namely, the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce (European and Indian) and Labour."

If that recommendation stands I have nothing to say. Certain criticisms have been offered; but, in view of the facts that these recommendations were unanimous, and that the members of the previous sub-Committee constitute the majority of the present, I expect that the recommendations will stand. I will, however, just deal briefly with some of the criticisms offered. My friend, Dr.

Ambedkar—if I followed him aright—is of the opinion that the only class that should have special representation is the backward class. Even as regards Labour, he is of opinion that, if there be adult suffrage, Labour does not require special representation. As regards the capitalistic classes, like Commerce and Landlords, their very name was anathema to him. He said that there is no special representation of these classes in this country. I can quite understand that argument; but when we have proved democracy, when we have passed through the stages through which your great country has passed, there need not be the same need for special representation of the different classes mentioned above. Your present electors were not your electors even in 1917, when their number was much less. Your present electors were certainly not the electors after the Gladstone Act of the 'eighties. Your present number of electors were certainly not the electors after Disraeli's Act in the 'sixties, and, if I remember aright—I am speaking from memory—you had a little over one million voters after the Reform Act; you had something like two million voters after Disraeli's Act; and you had something like five million voters after Gladstone's Act. Well, apart from the initial five or six centuries, you have taken more than a century for the last phase of your development. Let us have at least thirty years for our development. During this intermediate period, I am sure that it is necessary—it is certainly desirable—that these separate interests should be properly represented. Take Commerce. Well, in the new system of representative government, I am sure Commerce will be called upon to pay more than it pays at the present moment. Take landlords. The same observation applies to them. Would you not allow the Commerce representatives, the Landlords' representatives, even to have their say before the majority decide against them, because in any case they will be in a hopeless minority? I fully believe in government by persuasion, by discussion. You should allow these interests to have sufficient representation, so that they may put forward their view-point. They have ultimately got to depend on the judgment, the sense of fairness, of the majority; but the majority will in no case be a majority of these classes. For all these reasons I submit that the unanimous recommendation arrived at last year should stand so far as this point is concerned.

As regards head No. (vi), I suggest that the age limit should be not less than 35. I further suggest that, as Sir Tej Bahadur Sapru pointed out, public service should also be an element.

Mr. Sastri: What is public service?

Sir Provash Chunder Mitter: What the actual rule for defining public service will be, we may leave to a later decision; but as regards those with public service, no property qualification would apply to them. Public service may mean various things. For example, my friend, the Right Honourable Srinivasa Sastri, has rendered distinguished public service in South Africa and Canada; that is public service. Mahatma Gandhi has rendered distinguished public service. As to public service, those who understand the

English language understand what it means. What definition you ought to give to it is a different matter.

Sir Muhammad Shafi: Who will decide the claim put forward by anybody and everybody as to whether A, B or C has rendered public service or not?

Sir Provash Chunder Mitter: I would like distinguished advice from Sir Muhammad Shafi on that point. If you want to decide it here, let us decide it here. If you want to get it decided somewhere else, do so. But it is no good quibbling. I would like to have your advice, Sir Muhammad Shafi, as to what in your opinion constitutes public service.

Sir Manekjee Dadabhoy: Honorary Magistrates also render public service; would you include them?

Sir Provash Chunder Mitter: Not necessarily. However, I think, Sir, we are assembled in this Committee to do serious business. If any view point is put forward against the cherished point of view of somebody else, let them not try to kill it by ridicule. If we want to discuss this, let us discuss in this Committee, or a smaller sub-Committee, what public service should mean. But, much as I respect you, Sir Muhammad, ridicule will be of little assistance to this Committee.

Sir Muhammad Shafi: I put a question merely to elucidate the point.

Sir Provash Chunder Mitter: I have left it to you, Sir Muhammad. I shall be perfectly content if you will draw up a list of public services.

Chairman: It will clearly have to be defined in the constitution if you are going to have this.

Sir Provash Chunder Mitter: Yes, certainly, that is my point; it will have to be very carefully defined in the constitution. If we want to define it here, let us go into it.

Now, Sir, the next point is:

> "What requirements, if any, are to be made in the matter of an Oath of Allegiance on assumption of a seat in either Chamber?"

I have no hesitation in saying that there ought to be an Oath of Allegiance. On that point, very possibly, the reason why it was specifically put was to obtain Their Highnesses' views. From what I gather from some of the representatives of the Indian States, I think they have no objection. What the form of the Oath of Allegiance is to be, is a matter which can be left to the draftsmen. There is another reason why, on the terms of this reference, we should have an Oath of Allegiance. Under the terms of this reference we are aiming at equality of status within the British Commonwealth of Nations. Now, the admitted head of the Commonwealth is the King-Emperor. Anyone who wants to come within this Commonwealth should have no hesitation in having an Oath of

Allegiance; and, as Their Highnesses do not object, I do not see that we need have much objection.

Then, Sir, the last item is:

> "What provision, if any, shall be made in each Chamber for nominated members, and for what purposes."

I may say generally that I agree with the recommendations of the Federal Structure sub-Committee, and I need not elaborate that point; but, if later on, the recommendations be not accepted, then I reserve to myself the full right of making my submissions. That is all I wish to say.

(The Committee adjourned at 4-10 p.m.)

PROCEEDINGS OF THE TWENTY-FIFTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON FRIDAY, THE 18TH SEPTEMBER, 1931, AT 11 A.M.

HEAD 2.

Questions connected with the Election of Members of the Federal Legislature—(concluded).

Dr. Ambedkar: I would like to ask Mr. Gandhi this question: The Congress has not considered at all the question regarding the nature of the Federal Legislature or the Federal Executive. The only question that the Congress has considered is whether it will be part of the British Empire or whether it will be independent. Consequently, what Mr. Gandhi said yesterday might be his own personal view. I should like to ask whether he was expressing his own personal view, or whether he claimed in that respect to represent the views of the Congress. Then I should like to ask him a second question. In so far as we know of the proceedings of the Congress which are open to the public, this question was not considered by the Congress to my knowledge. It may have been considered in secret by the Congress. Therefore, I ask the question. The next question is whether the question of indirect election to which, I think, he gave his support yesterday, was not put forward by Mrs. Annie Besant in the Home Rule Bill which was formulated, and whether that method of constituting the Federal Legislature was not definitely rejected by the Congress.

Chairman: Those are the three questions. No doubt Mr. Gandhi will consider the answers.

Mr. Joshi: I am very grateful to you for giving me this opportunity, and I am also very grateful to the Committee for their indulgence in allowing me to refer to one special question. The point upon which I want to touch now is the representation of the special classes.

We shall not ask for special representation of the working classes on two conditions. The first condition is, if there is adult suffrage; and the second condition is, if there is no special representation of any other class. But if there is no adult suffrage or if other classes get special representation, then we shall claim special representation for the workers also.

On the question of the adult franchise I do not wish to dwell here—this is not the Committee for it. But it is necessary for me to make clear that we believe that, if there is adult franchise, and if there are proper election rules for controlling extravagant expenditure and also providing for certain minimum election expenses being provided out of State funds, we believe that if Labour organises itself properly, Labour will be able in time to secure its share in the Legislatures. But, whether there is adult suffrage or not, if other classes, such as the Landholders or Trade and Industry, ask for and get special representation, then Labour also will claim special representation.

My Lord Chancellor, the present position of Labour representation in the Indian Legislatures shows great neglect of Labour interests. In the Legislative Assembly, by rule, there is not a single seat reserved; but, by courtesy, Government nominate one man, while the interests which we have to oppose sometimes have as many as twenty-one seats. It is necessary for me to name those interests. I will consider all the European interests, all the Landholders' interests, and the interests of Trade and Industry together. These three interests may be described as the same—the interests of capitalists. They have as many as twenty-one seats reserved for them. Besides this, they, being very wealthy people, get representation through ordinary constituencies, while there is only one seat for Labour in the Legislative Assembly. There is no seat in the Council of State at all. As regards the Provincial Councils, there are only ten nominated seats for Labour in all the Councils together, while there are eighty-six seats given to the Europeans, Landholders and Trade and Industry. This position clearly shows that Labour is not properly represented.

The Royal Commission on Labour, over which Mr. Whitley presided, admitted this fact, and they have, at pages 462 and 463, dealt with this question. They say that, even if the minor reforms made in 1926 are taken into account, Industrial Labour, by comparison with the employers, has been under-represented. They admit this fact, and they have made some suggestions. One of their suggestions is that Labour representation must be adequate. They do not state that " adequate " means so much; they have not gone into it; but if you would ask me what is meant by " adequate," I myself hold that Labour should be represented in accordance with its numbers. At least, Labour representation cannot be less than the representation of the Europeans, the representation of the Landholders and the representation of Industry and Commerce put together. We must at least get as much as they get; and our

claim is that we should get representation in accordance with our numbers. We do not want any special favour at all.

Then, the Royal Commission on Labour also recognises that this representation should be by election. They are opposed to nomination on several grounds. I do not wish to go into those grounds at all; but they definitely state that, in their opinion, the proper method of representing Labour in the Legislatures is by election. Then they suggest, as the method of election, direct election by members of registered trade unions as constituencies—they suggest that, for the representation of Labour, the trade unions should be regarded as constituencies. This is concerning Industrial Labour.

We claim—and the Royal Commission on Labour also admits—that some provision must be made for the representation of Agricultural Labour. It is true that to-day there are no special registered organisations for Agricultural Labour; but there are organisations called the Kisan Sabhas, which are the beginning of some organisation; and I am convinced that, if we once recognise the principle that the representation of the agricultural wage-earners should be through their organisations, there should be no difficulty in securing registered organisations.

Then, Lord Chancellor, there are one or two other classes which are also the working classes; that is to say, the labourers, for whom I plead that they shall have representation. These are the agricultural tenants. They are not wage-earners in the strict sense of the word, but they are a class whose interests must be protected by special constituencies if there is to be special representation for other classes. You cannot give special representation to Landlords and refuse to give special representation to the class of Tenants.

Then, My Lord Chancellor, there is one more class which is also a labouring class. That class is the class of Untouchables. Ninety-five per cent. of the Depressed Classes or Untouchables are labourers. Therefore I plead that what applies to these other classes applies to the Depressed Classes with much greater force. Lord Chancellor, I was sorry yesterday to hear from Mahatma Gandhi that, although he was willing to recognise the claims of the Muslim and Sikh communities for special constituencies, he was not willing to concede that facility to the Untouchables. It was rather a shock to me to find that the Indian National Congress and Mahatma Gandhi should recognise the historical importance of conquest—which is the historical importance of the Muslim and Sikh communities—while they should not recognise the historical importance of oppression. The Depressed Classes have been an oppressed class for centuries in India, and this historical fact should not be ignored by anyone. I was, therefore, very sorry that Mahatma Gandhi, while conceding the historical necessity of giving special representation to the Muslim and Sikh communities, would not recognise the similar claim of the Depressed Classes. I feel, Lord Chancellor, that if there is any class in India which requires special representation and protection, it is the Untouchables or Depressed Classes. Whatever this Conference and this Committee

may do as regards special representation, if you really want to be fair and just you cannot ignore the claims of the Depressed Classes to be treated as a special class. I hope, Sir, that the Committee will insist that the interests of the Depressed Classes should not only be protected but that they should get their fair and due share of representation in the Legislatures. My Lord Chancellor, I am very grateful to you for giving me this further opportunity.

Sir Akbar Hydari: Does Mr. Joshi want the Depressed Classes and Labour to have special representation by excluding them from voting in the general electorates; that is to say, will they form separate electorates?

Mr. Joshi: My Lord Chancellor, I consider the Depressed Classes to be somewhat different from Labour; in their case there is an absolute necessity for special representation. If there is to be a special constituency for anybody, including Muslims and Sikhs, I would first give a special constituency to the Untouchables. As regards Labour, I made it quite clear that, if there is adult suffrage and if there is no special representation for any other class, I shall not claim special representation for the working classes at all. I would take my chance at the polls. But there is one thing I want to say, to make my point clear: if there is special representation, it really means that Labour will get its share in the constituencies to the extent to which it can. Special representation will be special representation. As no man who is engaged in trade or commerce will be disqualified from voting in the ordinary constituencies, so no labourer should be disqualified from voting in the ordinary constituencies simply because there are separate constituencies for Labour.

Mrs. Subbarayan: Lord Chancellor, I would like to make a few remarks on this Head, but I do so with much diffidence and hesitation, being conscious of my lack of experience of the work of the Legislatures, and also conscious of the discussion to which we have been listening. But, as a member of this Committee, I feel it is my duty to tell the Committee what I feel on this Head, and I hope the Committee will patiently bear with me.

As regards questions (i) and (ii), may I say that I welcome the assurance given by Their Highnesses of Bikaner and Bhopal that they are prepared to make arrangements to allow their Assemblies to have a voice in the selection of their State representatives for the Lower House. I hope that other States also will follow their enlightened example.

As regards (iii), like Mr. Gandhi and Mr. Joshi I would prefer to see a single Chamber in the Central Legislature, if adequate provision is made to give it that weight and stability which a Second Chamber is believed to give to a Legislature. If that is done, I think the functions of a Second Chamber could be well performed by a single Chamber. The financial economy which would be effected is a point worthy of consideration in a poor country like India, as Mahatma Gandhi pointed out to us yesterday.

If, however, a Second Chamber is decided on, I would favour the method of indirect election—the representatives from the Provinces to be elected by the Provincial Legislatures by the single transferable vote; but I must also say that I am strongly of opinion that the Lower House should be the predominant one.

As regards (iv), I am in favour of direct election to the Lower House. Sir Tej Bahadur Sapru and other speakers have already clearly stated their views about this, and I entirely agree with them. Like Dr. Ambedkar, I believe that the strength and force of representative government lies in the tie that binds the elected and the elector together. I feel it is of the greatest importance that every elector should feel that he is in direct touch, not only with the affairs of his own Province, but also with those large questions which affect the safety, the happiness and the prosperity of his country as a whole, and which will be in the charge of the Central Legislature. I know that the method of direct election is rather a cumbrous one at the present time in India. Though I have myself not been a candidate for any Legislature, I have closely watched the four general elections which have been held under the Montagu-Chelmsford Reforms; and I quite realise that the vastness of the area of a territorial constituency, the large electorate, the transport difficulties and so on, make direct election very difficult. But I think arrangements could be made to make this machine work more easily. As I stated the other day, I hold that our main object should be to try to build up a national feeling. We can help to effect this by encouraging in every elector a personal and direct touch with the deliberations and acts of the Central Government, and a feeling of responsibility for them.

As regards (v), with your permission, Lord Chancellor, I should like to take it up last, as I wish to say a little more about it than I do about the other items.

As regards (vi), I have already said that I do not believe an Upper Chamber is necessary; but, if it is decided to have an Upper Chamber, I certainly do not approve of the ownership of property being a necessary qualification. I can understand education, experience and public service being necessary qualifications, but I cannot understand why ownership of property should be a necessary qualification. This, of course, is my general view; but I am also particularly opposed to it because it would exclude a large number of women from eligibility to this House for the mere reason that they do not hold property because of present law and custom; and I am particularly anxious that women should be in both Houses of the Legislature, if there are two Chambers.

As regards (vii), I leave this to our legal experts on the Committee.

As regards (viii), I am not in favour of the policy of nominating members to any Chamber of a responsible Legislature, but I shall reserve my final remarks until I know more details about the proposals to have what are styled official Ministers in charge of Crown subjects.

Now I should like to say something about item (v). As regards item (v), I would, with your permission, briefly state our views on the question, which we raised at the last Conference, as to whether women should have some special provision to ensure their presence in the Legislatures. Perhaps it is a matter which could better come under the purview of the Minorities Committee, where it was raised last year; but, as it also seems to come under this Head, I may perhaps be allowed to say a word or two about it here.

First of all, I should like to say a word as to what happened at the last Conference. My colleague, Begum Shah Nawaz, and I circulated to the Conference a memorandum on the political status of women in which we asked, among other things, that in addition to ordinary open election, there should be a temporary reservation of seats for women in all the Legislatures. This claim was based on the grounds that the principle of reservation of seats was to be a recognised feature of the new constitution; that women were not as yet in a position of political, economic and educational equality with men; that their actual presence in the Legislatures in sufficient numbers was the most essential in the opening years of a new India; but that we were convinced that the general public in India, as in most other countries, was not yet sufficiently accustomed to the idea of women taking part in legislative work to return them in any numbers at the polls, though one or two might be so elected.

In the Minorities sub-Committee I put forward the same claim and suggested that such reservations should last only for three elections. I also indicated that an apparently suitable method was that of election by the Legislature immediately after its own election, voting by proportional representation. This, we hoped, would avoid the difficulty of distributing a few seats among many territorial constituencies, and would also avoid the introduction of the communal question, from which the women's movement has been happily free up to the present time.

Chairman: Do you mind telling me whether you agree with paragraph 11 of the Report of the Minorities sub-Committee? If you will kindly look at page 47 you will see that it says this:—

> "11. No claim for separate electorates or for the reservation of seats in joint electorates was made on behalf of women who should continue to be eligible for election on the same footing as men. But, in order to familiarise the public mind with the idea of women taking an active part in political life and to secure their interim representation on the Legislature, it was urged that 5 per cent. of the seats in the first three Councils should be reserved for women and it was suggested that they should be filled by co-option by the elected members voting by proportional representation."

You will observe there that one thing was urged and another thing was suggested, but there was no decision. What is your view as to that?

Mrs. Subbarayan: That was our proposal, Lord Chancellor.

Chairman: I thought it was. Thank you very much. You stand by that now?

Mrs. Subbarayan: I am going to speak on it.

Sir Muhammad Shafi: May I ask Mrs. Subbarayan a question with reference to this point? Is not it a fact, Mrs. Subbarayan, that the all-India Women's Conference passed a resolution against any reservation of seats for women?

Mrs. Subbarayan: I am going to refer to that. I wanted to explain what happened: I did not know if all the members of the Committee were aware of what happened last year.

It may be within the recollection of this Committee that, when the Report of the Federal Structure sub-Committee was considered by the Conference in Committee last year, my colleague, Begum Shah Nawaz, urged that, on paragraph 34, women should be added to the list of special interests which should be entitled to reserved seats. May I just say, in general, that in everything that we did last year we consulted as far as possible the views of such Indian ladies in India and in England as we could approach in the short space of time at our disposal, and clearly understood that we had their support?

Since the last Conference, the question has been considered amongst women in India, and I should like to place briefly before the Committee the position as it now stands. I want to point out that our proposal has not been supported by three of the leading women's organisations in India—the all-India Women's Conference (which is the largest organisation of women's associations in India, with constituent branches throughout the country, and which claims to speak for the women of India), the Women's Indian Association (which has been doing remarkable social and educational work), and the National Council of Women (which also works in the interests of women). These organisations issued a joint memorandum last May, and, with your permission, My Lord, I will read extracts from it, relevant to the question under discussion.

> "The National Council of Women in India, the all-India Women's Conference, and the Women's Indian Association welcome and endorse the declaration of the fundamental rights of citizenship in India under the future constitution made by the accredited leaders of the nation, namely, equal rights and obligations of all citizens, without any bar on account of sex; no disability to attach to any citizen by reason of his or her religion, caste or creed, or sex, in regard to public employment, office, power, or honour, and in the exercise of any trade or calling. This declaration of the fundamental rights of citizenship in India having been made, the recognition of women's equal citizenship in all matters relating to franchise, representation, or employment has become an accepted principle. The present memorandum is, therefore, concerned only with the actual methods by which women may be enabled to exercise their legitimate

rights. The women of India on the basis of their admitted and declared equality recommend that every man and woman of the age of 21 should be entitled to vote, and offer himself or herself as a candidate, at any election to an administrative or legislative institution. We are confident that, if this practical equality is secured for women in the matter of franchise, they will be able to find the way to the legislative and administrative institutions of the country through the open door of ordinary election. No special expedients for securing the presence of women on those bodies, like reservation, or nomination, or co-option, would then be necessary. The women of India have no desire to seek any special favoured treatment for themselves as long as their full equal citizenship is recognised in practice as it is in theory."

My Lord Chancellor, although these views do not quite represent my sentiments, I should feel that I was lacking in my duty to this Committee if I did not put them (supported as they are by a large body of organised women's opinion) fully before the Committee. I personally stand as I stood before, by the belief that there should be some provision in the constitution to ensure that women shall take a place on the Legislatures in the first formative years of the new constitution. I do not wish now to adopt any particular phraseology for it, as it is somewhat different from the accepted definition of reservation of seats. I will only say that I did not lightly adopt that view last year, and I still think that it is in the best interests of women, which I have deeply at heart. I therefore welcome warmly Mahatma Gandhi's statement yesterday of his views on the subject.

I must also tell the Committee that in this view I know that I have the support of a number of individual women who are doing important social and educational work in India, who have asked me to continue to press it. They, like myself, base their views on practical grounds. We find it hard to believe that the granting of equality in civic rights will be immediately followed by equality of opportunity. We have much lee-way to make up before we can stand on any kind of real equality with men. The women of India, like those of other countries, have to surmount a great deal of apathy and prejudice at the hands of both men and women; and some provision such as was suggested last year seems to me the quickest and surest way of bringing this about. We visualise the practical difficulties of the situation; for instance that, as Indian women do not usually hold property, they will find it difficult to afford to stand as candidates; that, owing to the vastness of area, the large electorates, and the difficulty of transport, women will find the practical difficulties of standing at an election most formidable, and so on. May I finally say that we who support this proposal do not regard it as a privilege or a favour, nor do we feel it in the least derogatory to suggest such a provision?

It is difficult for me to say anything more here and now on the question. I have not yet had time to discuss the position fully with

my women colleagues together, one of whom has only recently arrived in England, while the other is not yet here. Moreover, it is a question which affects Provincial Legislatures as well as the Central Legislature. I would, therefore, with your leave, My Lord Chancellor, reserve further remarks on this subject for the Minorities Committee, which also deals with the representation of special interests, and before which the question was raised last year.

Mr. Joshi: I should like to ask Mrs. Subbarayan, when she supported the proposal for co-option of women members, whether she does not think that, when the power of co-option is given to the majority of members in the Legislature which will form the Government, co-option is really equivalent to nomination by the Government.

Mrs. Subbarayan: No. It will be proportional representation.

Mr. Joshi: It will largely be nomination by the Government. I should like to ask Mrs. Subbarayan whether she does not think that any Government in power will use that power to strengthen its position instead of giving a fair representation to women.

Chairman: No doubt Mrs. Subbarayan will consider the matter and let you know later.

Diwan Bahadur Mudaliyar: It is with very great hesitation that, at this stage of this prolonged debate, I take part in it. I wish that we could go back to the atmosphere that prevailed in this Federal Structure Committee on the last occasion, and—without making any reflection whatsoever—regain some of that business-like character which was its predominant feature during the weeks that we spent last year and in the early part of this year. My Lord, I wish also that we could regain some of that co-operative spirit, and that good will to which Lord Reading in his opening remarks referred.

Chairman: I do not think that we have lost any of that. It is not a question of regaining it.

Diwan Bahadur Mudaliyar: At any rate, I hope that we will continue to maintain that good will.

Chairman: That is right.

Diwan Bahadur Mudaliyar: Normally I should not have referred to any of the items (i) and (ii) under Head 2. I would have repeated the statement that most of us made on the last occasion, that it was a matter entirely for Their Highnesses to decide, but, in view of some statements and arguments that have been advanced on this side of the Committee, I feel it my duty to make a few observations on these two items.

I stand by the position which we adopted on the last occasion, that, with reference to the method of election to either Chamber by individual States or groups of States, it is a matter entirely within the discretion of the State administrations and of the Rulers of the Indian States. All that has intervened since we parted has emphasised and confirmed that view. We are anxious, Lord

Chancellor—more anxious now, with the experience that we have gained during the intervening months, than ever before—to proceed with this idea of federation. I was grateful to hear from the Congress representative yesterday that he was prepared to do everything possible to facilitate the development of that idea and to make it easy for Their Highnesses to come into the Federation. If we have that broad point of view firmly before us, I think many of these questions will answer themselves.

It has been argued, on the one hand, that the interests of the State subjects require a direct representation of them by election. I am as acutely interested in the welfare of State subjects as most other protagonists of their claims. What I have seen and heard, the development I have witnessed during the past few months, makes me convinced in my view that the best satisfaction that they will get is by British Indians leaving this matter entirely in the hands of Their Highnesses. I would recall to the minds of the members of the Committee the processes through which we have evolved so far—how, at the first stage, the Indian States came and said that they were willing to enter the Federation; how later, while in the first instance they were agreeable to enter into the Second Chamber only, they revised their opinion and accepted entry into both the Chambers, and how, last of all, the other day Their Highnesses of Bikaner and Bhopal very graciously suggested that they were willing to consider the question of giving a voice to their Legislatures in the representation of members in both the Houses of the Federal Legislature. This course of events only confirms me in the view that he is the best advocate of the right of State subjects who ventures to suggest, as Mahatma Gandhi did, that this matter may be left to Their Highnesses. They say that the race is not always to the swift nor the fight always to the strong, and I venture to suggest that the obstinate and cantankerous advocate is not necessarily the most successful winner of causes. I, Sir, without any feelings of humiliation whatsoever—especially as I have no manner of connection with the States or their affairs—should be prepared to play the part of the Laputan flapper, and content myself by gently reminding the States and their Rulers occasionally that their subjects also are desirous of having a part in the Legislature of the Federation.

Lord Chancellor, another point of view has been pressed (and very strongly) by Dr. Ambedkar; and as that may have some weight with some of the members on this side, I should like to refer to that as well. It has been suggested that, if the principle of election of State subjects were not guaranteed, there might be created a bloc which, in essence, will not differ very much from the official bloc; and it was suggested that the Political Department in particular will play a great part in constituting that bloc. Sir, I have no hesitation in stating that the great body of public servants who constitute the Political Department are as conscientious and as fair as any other body of public servants anywhere in India or outside.

Dr. Ambedkar: Why do you want responsible government at all, if that is so?

Diwan Bahadur Mudaliyar: It is true that it has been suggested very freely that they have been guilty of Machiavellian methods on more occasions than one—a suggestion which, I venture to think, is not just to them, nor even fair to the large body of Rulers of Indian States. I therefore think that there is no point in the observation that the representation of the Indian States, if it is not secured by election of Indian subjects, necessarily means the creation of a bloc. On this question I am also reminded of the fact, which many of the members of the Committee know, that the State Rulers themselves are putting forward, on points which are called political subjects, on points like dynastic succession and misrule in a State, proposals which will materially alter the nature of the control which is now exercised in these matters. It seems to me that these arguments give one more reason why those proposals should be pushed through, and the plans that Their Highnesses have put forward for the carrying out of these changes, with reference to dynastic succession and misrule in States, should receive the serious consideration of the British Government and should be brought to an agreed and successful conclusion. The argument that has been advanced by my friend Dr. Ambedkar merely confirms me in the view that we from British India also have an interest in seeing to the successful solution of that question.

Lord Chancellor, I do not think I need trouble this Committee on this point any further, except to state that I fully agree with the proposition that Sir Mirza Ismail has laid down in these discussions, and which was referred to by my friend Sir Sultan Ahmed.

On the question of the representation of British India in either Chamber, I venture to state that the large body of opinion on this side is committed, and definitely committed, to the principle of direct election so far as the Lower Chamber is concerned, notwithstanding what we heard, to the surprise of some of us, last evening. On the simple ground that the contact between the candidate and the electors cannot be maintained in as close and as continuous a fashion as it is the desire of everybody to maintain it, I suggest that no sort of indirect election will be advisable. Congress precedents have been very largely invoked in support of the theory. I must be clearly understood not to make any sort of reflection, but I think those outside the Congress are perhaps in a better position to realise the working of its institutions than those who are actually taking part in those Congress institutions. And may I ask you, my Lord Chancellor—or, if you find it embarrassing to reply to the question, may I appeal to the experience of those in this Committee who are outside the Congress—whether it is not their honest conviction that the resolutions adopted at the Congress are the result of personal success rather than of the vindication of democratic principles? The method in which the Congress is organised and the Congress body is brought into being makes for dictatorship rather than for democratic rule. It may be that many of us believe that

such dictatorship is for the essential good of India; but, if we want a federation and democratic forms of government, then I venture to suggest that we shall have to stand by the proposal which my esteemed friend, Sir Tej Bahadur Sapru, put forward for direct election so far as the Lower House is concerned.

As regards the Upper House, I think the overwhelming body of opinion, both in the Committee and in the country, has expressed itself in favour of indirect election through the Provincial Legislatures; and I would only emphasise what my esteemed friends, Dr. Shafa'at Ahmad Khan and Dr. Ambedkar have said, that to establish the proper quotas a system of proportional representation could be worked so as to bring about reasonable results.

I should like to make a very few remarks with reference to special constituencies; and perhaps they may be unorthodox. It is true that, on the last occasion, it was stated that the Federal Structure sub-Committee unanimously came to the conclusion that various special interests would have to be represented. If I unconsciously subscribed to that, I do not wish to go back on it; but I would like the Committee to consider whether it is necessary to have various special interests represented in the Legislature. It does not obtain in this country. Take, for instance, the question of the representation of Trade and Commerce—European Trade and Commerce, and Indian Trade and Commerce. I do not know if I am right—and I hope I shall be corrected if I am wrong—when I state that, before the Montagu-Chelmsford Scheme of Reforms, there was not this distinction between Indian trade and European trade, and there was no special representation of Trade and Commerce in any of the Councils. The result of this representation of Trade and Commerce as such has been disastrous. In the first place, you have divided Indian trade from European trade and brought them into marked clash with each other; and I venture to think that the developments during the last decade in this matter have been largely due to the short-sighted policy of those who framed the last Act and by the short-sighted policy of those who have given representation to individualistic units. After all, the trade and commerce of a country is not something apart from the human inhabitants of that country, from the nation at large: it is so inextricably mixed up with it. It ought to be the duty and the right of every individual to have an interest in the trade and commerce of the country; and why trade and commerce should be separated, kept apart, treated as a distinct unity and given separate representation as though it were in hostility with the rest of the country, I for one cannot understand. As regards European trade and commerce, I have not the slightest objection to the European community being represented as such, and in a moment I will say something more on that; but I venture to think that it is a mistake—and it is still open to us to correct that mistake—to give any representation to trade and commerce, either Indian or European.

There is only one word that I should like to add on a matter which has been adverted to, regarding the representation of the European community. Lord Chancellor, it was seriously suggested that a European may be represented in a general constituency, and that Mr. Charles Andrews may be one of the successful candidates to the Legislature.

Mr. Iyengar: Or Mr. Gavin Jones.

Diwan Bahadur Mudaliyar: I have no doubt that Mr. Charles Andrews will be a successful candidate; I wish I could be quite as hopeful of my friend Mr. Gavin Jones. But the point that has to be remembered with reference to these elections is this: if you once concede that a community as such has to be represented in the Legislature—whether it be the Muslim, whether it be the European, whether it be the Sikh—you have also to go a step forward and to concede that that representation should be to the satisfaction of the community concerned—that the community should feel that its representative is there to voice the opinions of that community. If, on the other hand, you do not recognise the need for voicing the views of that community, then do not give representation to the community at all. But you cannot, by a sort of jugglery (if I may use that expression without offence), merely have a gentleman in European costume representing the European community, and say that the European community's views are represented on that body. If the choice were given to the European community, I do not know whether they would not prefer an Indian, like my friend Sir Maneckjee Dadabhoy, to represent them, to either Mr. Charles Andrews or Dr. Annie Besant, for the matter of that. Therefore, Sir, I venture to think that we must bear this fact in mind—that when you concede representation to a community, it must be representation which satisfies that community and which makes that community feel that its voice is being genuinely represented in that Legislature.

Lord Chancellor, it has been suggested that there should be an age qualification for the Upper House.

Sir Maneckjee Dadabhoy: I would like to know from Mr. Mudaliyar whether, in his advocacy, he would insist on the Federated Chamber of Commerce in India not being recognised as a special constituency.

Diwan Bahadur Mudaliyar: At the present time, Lord Chancellor, the age limit is 25, both for the Council of State and for the Legislative Assembly. I trust, Sir, that you will acquit me of any intention of being flippant; but when I hear suggestions that the age should be 35, 40 or 45, as my friend Sir Maneckjee Dadabhoy says . . . . . .

Sir Maneckjee Dadabhoy: I did not say 45, Sir; I said 35 or 40.

Diwan Bahadur Mudaliyar: 40, as my friend said—so that that House may be a sober House and may have experience and learning, I ask myself in all humility whether age and sobriety and learning always go together.

Sir Maneckjee Dadabhoy: Experience goes with age.

Diwan Bahadur Mudaliyar: My friend suggests that experience goes with age. I remember having read somewhere that some people live and never learn. Sir, I assure you I am not flippant on this matter at all. In my own Province I have used the youth organisations to steady public opinion; and if we have followed aright the course of events in my own country, I do not think any of us would lay great weight merely on age. I think, Sir, there ought to be overwhelming or very strong reasons for changing the present age of 25. And, after all, I am pleading for the introduction of some of that unbiassed, unprejudiced and, may I say, idealistic age to have an interest even in the sober Chamber.

Lord Chancellor, the next question which you have raised brings to my mind many considerations. I do not know whether I am right in interpreting the head that you have put down—

> " what requirements, if any, are to be made in the matter of an Oath of Allegiance on assumption of a seat in either Chamber "

as meaning that you are not yourself quite definite that there ought to be an obligatory Oath of Allegiance on assumption of a seat in either Chamber. Before I go into the question of the form of the Oath, I ask myself whether an Oath is necessary at all. Have we always found it useful? Does it carry out the purpose for which an Oath is given? May I read to Your Lordship the present Oath of Allegiance which everyone of us has taken who has had the privilege of serving either on a Provincial Legislature or in the Legislative Assembly:—

> " I, having been elected or nominated a Member of this Assembly, do solemnly swear that I will be faithful and bear true allegiance to His Majesty the King-Emperor of India and his Successors, and will faithfully discharge the duty upon which I am about to enter."

Let me address myself to the last words of this Oath—" that I will faithfully discharge the duty upon which I am about to enter." Lord Chancellor, you have known what has been going on in the Provincial Legislatures and in the Legislative Assembly in India. Gentlemen who have taken this Oath have said that it was consistent with the Oath to wreck the Constitution under which they have been elected and which they have come to work. They have said deliberately on the floor of the House—and I can give you chapter and verse for it—that they are there to see that the dyarchic Constitution is put an end to. Now, some people have interpreted it to mean that this was not consistent with the duty upon which they were entering. Well, I do not put it forward as a very serious proposition; but I ask myself whether it is essential to insist on an Oath of this nature or anything like it. I remember that, in the Irish Free State itself, there has been a long controversy over the question of the Oath, and that the Church to some extent and for some time was very unwilling to make some of its members sub-

scribe to the Oath. Therefore, if the Oath is to be insisted upon, I do not see how it will really serve any useful purpose. If I were free to make the observation, I should like to state, in the language which Brutus adopted when Casius asked them all to take an oath, "It is only cowards that take oaths." Now, Sir, I do not want to stress this point, but I want the Committee to understand that there is another aspect of it also which may be considered in regard to this question of the Oath. If, however, we come to the conclusion that an Oath is essential, I should heartily subscribe to the Oath of the Irish Free State, to which reference has been made by Sir Tej Bahadur Sapru.

Lord Chancellor, I have nothing more to add except to reply to the question of my friend, Sir Maneckjee Dadabhoy. I must have been very dense indeed in the observations I made, Lord Chancellor, if I did not make it very clear to everybody that I do not want representation of trade and commerce, either Indian or European. If the Federated Chamber of Commerce represents trade and commerce Indian, then I do not want its representation either.

Pandit M. M. Malaviya: My Lord Chancellor, I beg to support the request that Mr. Gandhi made yesterday before Your Lordship that the procedure which is being adopted may be reconsidered. I feel, My Lord, that the stay of those of us who have come here from India is necessarily limited, while Your Lordship and your colleagues also can spare only a little time for the discussion of Indian affairs. I am naturally anxious that we should make the most of the time that Your Lordship may be able to give us and that we are able to give to this matter. From this point of view, I submit that there are certain matters which are matters mainly between the British Government and us Indians—matters relating to the extent and measure of responsible government that is to be established in India. Those are matters mainly between the British Government and the Indian people as a whole.

There are other matters relating to the form of the constitution, relating to the provisions regarding the Chambers—whether there should be two Chambers or not—to direct election and indirect election, to qualifications and disqualifications of electors and candidates, and so on. Matters of this latter class have been considered on many previous occasions since representative institutions were introduced in India. Lord Ripon was the first to introduce a measure of local self-government. From that time forward there have been rules and regulations laid down for the election of members of local boards and district boards, and, later on, of Provincial and Supreme Legislative Councils, of the Legislative Assembly and the Council of State. Questions of this latter class have all been considered on these occasions, and we have got a body of literature to help us in arriving at conclusions on these points. These are not points which divide us Indians very sharply; they are matters in regard to which it should be possible to arrive at general agreement without much difficulty, I submit that, to save

time, this latter class of questions might be left over to be discussed, in the first place, informally among ourselves; and when the results of this discussion have been submitted to Your Lordship, they might be taken up for formal and final discussion at this Conference. My object is that questions of the former class—that is to say, questions which have to be determined by the British Government as to the method and extent of responsible government to be established in India—deserve, and I hope will receive, primary attention. If this commends itself to Your Lordship, I hope the procedure may be reconsidered.

My Lord, the questions that have been raised under Head 2 relate to matters of detail which, I submit, can be settled and should be settled in a much shorter period of time; but there are one or two of them which are of outstanding importance and about which I feel I ought to say a few words.

The first is the coming in of the Indian States into the proposed Federation. I submit that some of my friends, who have criticised the attitude of the States and have pressed the Rulers of the States to agree to some method of election in the first instance for the members who are to represent the States in the Central Legislature, have not fully realised the situation in which the States are placed and in which we are placed. We must deal with the realities of the situation. India is one integral country, girt on three sides by the sea and on one side by the mountains. That integral whole stands knit together; and from time immemorial the Government which has been successful in India has been that Government which has exercised supreme, sovereign authority over the whole of that territory, so that the whole of that territory has been, as the expression goes, under umbrella. The Shivaji Maharaja used to be called the Chhatrapati—the one who had one umbrella waving over him. That has been the idea from the remote past. When the Mussulman came in, Emperor Akbar understood the position; and he and his successors tried to take up that position and succeeded in a large measure in doing so. Even during later times, My Lord, the Indian Princes were either in alliance with the central power or they were fighting against it, fighting against it to establish another central power in its place. Since the British Government came to India they have also followed that example of having one unitary government established in the country.

The States, which no doubt form one-third of India, are not subject States; and, though they are sometimes called feudatory States, many of them are not feudatory States at all—they are in friendly alliance with the Government of India as at present established. These States, therefore, have to come into the constitution of the future Government of India if that constitution is to prove satisfactory and to endure. We have agitated for years for the establishment of full responsible government in British India. We did not then consider what relations would exist between the Indian States and the new Government of India; but, at an early stage, it was recognised that there must be close and

friendly relations established between the Indian States and the new Government of India, as otherwise the position could not be satisfactory.

In view of that it is a matter of supreme thankfulness that the Rulers of the Indian States have had the patriotism, the foresight, and the statesmanship to recognise what the situation demanded; and I am sure we all feel grateful to them for having taken the larger view which they have taken in this connection. It is they who primarily offered to come into the Federation. The new constitution that was talked of for a long time was not intended to include the Indian States; and a difficulty was felt in that regard which was expressed on every occasion when the matter was debated in the Assembly. When first we took the matter up in 1924, Sir Malcolm Hailey—Mr. Hailey as he was then—took up that point as one of the main difficulties in the way of the introduction of responsible government in India—namely, the question of the Indian States. We were, therefore, not sure of our ground when the proposal for a Round Table Conference was started; and when the Indian Princes were invited to come into it, it was only to enable them and the representatives of British India to come to an understanding, possibly by means of new Treaties, regarding the part that they would take in the national advance of India and also regarding their representatives having some voice in the administration of questions which are common to them and to us in British India—matters, for instance, relating to Customs, Posts and Telegraphs, and similar subjects. That was all the idea that some of us had at the time; and when the Princes, inspired by their highly patriotic sentiment of contributing their full share to the building up of a new India, declared themselves in favour of joining an Indian Federation, I submit they earned the lasting gratitude of their countrymen.

In this situation, therefore, let us not be too greedy; let us not try to attempt too much. Let us welcome the coming in of the Princes, and let us welcome it with a full heart. Let us realise the difficulties in which they are placed. No doubt we had representative institutions in ancient India; we cannot forget our village communities and the growth of subsequent years. But since the British Government took charge of the administration of British India—since, rather, the British Crown took direct charge of the administration of British India—we have been proceeding very slowly; unfortunately, too slowly. We have been asking the British Government to introduce representative institutions, to give the people the right to vote at the election of representatives; and it has taken us forty-seven years to get the British Government to invite us to a Conference seriously to consider what the next step in constitutional advance should be.

The Reforms that were introduced at the instance of the Congress during the time of Lord Lansdowne, in 1892, and at the instance of Lord Minto and Lord Morley, in 1909, and the subsequent Reforms of 1919, all gave an extended representation to

Indians in the election of members of the Legislative Councils. Personally, I believe in the principle of representation. I think that the English people deserve credit for, and they can well be proud of, the fact that they have shown the way for the introduction of this principle to all the civilised countries of the modern world. I believe in it, and I should be delighted if Their Highnesses would introduce or extend representative institutions in their own territories. I am confident that, as some of the States have already introduced such institutions, every other State will introduce them in course of time; but we must recognise the difficulties of their situation. The thing is entirely new. Even the progress that we have gone through in British India in several respects has not been experienced by some States—I cannot say by all, because I am happy to think that some of the Indian States have led the way of reform in the matter of representative institutions and universal compulsory education. I am glad to find our esteemed friend, His Highness The Maharaja Gaekwar, here, who was the first among Ruling Princes to introduce a large scheme of popular education, and who voted a very large sum for that purpose. We have, therefore, to wait and see, and to give time to Their Highnesses to introduce the principle of representation as and when they may find it convenient. Personally, I join with my friends in the desire that that principle should be introduced as early as practicable. I have had the privilege of speaking to several of Their Highnesses on this subject, and I have no doubt in my own mind that that principle will be introduced in many States at an early time; but it is neither wise nor graceful for us British Indians to insist that there shall be no federation with British India and Indian India unless the Indian States agree that the representatives, who will come to represent the States in the Federal Assembly, shall be elected by the popular voice. I submit that that is a matter which should be left to the judgment, the patriotism, and the statesmanship of Indian Rulers.

Dr. Ambedkar: Why are not you similarly kind to Sir Samuel Hoare, and let him take his own time for introducing popular institutions in British India? He will be grateful to you, I am sure.

Chairman: I do not think that we need discuss Sir Samuel Hoare's gratitude. That is a matter which is not before the Committee.

Pandit M. M. Malaviya: My friend, Dr. Ambedkar, forgets what I have said. I have repeated twice that I desire that the representative principle should be introduced into the States at once. I do not yield even to my friend, Dr. Ambedkar, in that desire; but I recognise a difference between my desire and Dr. Ambedkar's desire and the right of the Ruling Princes to take time to consider when and how the representative principle may be introduced in their States. My object, My Lord, in dwelling upon this point, is that the great scheme which is now under consideration should not suffer or be wrecked by an injudicious insistence (if I may say so) upon the States introducing the principle of representation

before they can come into the Federation. My whole object is that the Federation should come into existence. I picture to myself, My Lord, a united India, united though divided—the States having full autonomy to manage their own affairs except in so far as they agree to delegate their power to the Federal Government, and at the same time standing together with British India shoulder to shoulder, and soul to soul, for the defence of the Motherland, and for the progress of the entire people who live in that land. I have the hope that that will be so. I cannot think of the India of the future as a land in which one-third of India, the States, with their population of twenty millions, will stand apart. That India will be a weak India. The strong and united India that I picture to myself—and I am sure that all my friends desire the same—will be an India in which the people of British India and of the Indian States will work together as patriots—in which the latter will combine allegiance to the Rulers of their own States with fidelity to our common Motherland—who will take their example from the Princes whom we have the pleasure of seeing before us, who have shown that they are patriots as well as Princes. I hope that the questions which have been pressed for the consideration of Their Highnesses will be viewed in that light.

Now, My Lord, I want also to say that those of us who are impatient—and none can be more impatient, I will repeat, than myself—to see the principle of representative institutions introduced into the States, should remember . . . . . .

Dr. Ambedkar: May I point out, My Lord Chancellor, that we on this side have never said that representative institutions should be introduced into the States? All that we say is that there should be constituencies in the Indian States, similar to the constituencies in British India, for the election of the representatives to the Federal Assembly. I have never said that there should be popular assemblies in the Native States to control the Native States as a condition precedent to the entry of the Princes into the Federation.

Pandit M. M. Malaviya: If Dr. Ambedkar thinks that he has not asked for representative institutions, I leave him to have that satisfaction. We should not think that, if members who will come to the Federal Assembly from the States will not be elected by some popular method, they will not be useful. We must remember that, even in England, it has taken a long time to arrive at the present suffrage. In England, before the Reform of 1832, less than 15,000 persons voted for the members of the House of Commons. We hope to progress much more rapidly and much more satisfactorily; but, even under that system of limited suffrage, some very capable Englishmen were elected to Parliament through some of the boroughs which were called " rotten boroughs," in which one man, so far as I remember, had eleven votes in his pocket. That was before 1832. I mention it, not as a plea for introducing a similar system, but to show that, even if the representatives of Indian States do not come by popular election—which, I again repeat, I desire

that they should—even then we may have some excellent representatives whose co-operation will be very valuable in our work.

Chairman: Summing it up quite briefly, you say that "rotten boroughs" do not always return rotten members.

Pandit M. M. Malaviya: I thank Your Lordship. I wish I could imitate Your Lordship's epigrammatic way of putting things.

It should be obvious to everyone that the fact that the Indian States—the Rulers of Indian States—have with open eyes decided to accept an all-India Federation necessarily implies that the principle of representation will be introduced into those States. None of Their Highnesses can fail to see that, once they agree that their subjects should come as representatives of their States to the Federal Assembly, they will have to devise some scheme by which such representatives will be elected. It is only a matter of time. If some of them are able to introduce it before the new constitution comes into being—if they are able to announce the establishment of representative institutions in some of their States—I shall be delighted; but if they should not find themselves in a position to do so immediately, then my recommendation to my British Indian friends would be, let us show patience and courtesy, let us hope that such institutions will be established in proper time, but let us not do anything to create unnecessary obstacles in the way of the establishment of that all-India Federation upon which now, as matters stand, our hopes so much depend.

Dr. Ambedkar: That is the same advice that is given to the Depressed Classes—that their salvation will also come in time.

Pandit M. M. Malaviya: My Lord, my friend, Dr. Ambedkar, is entirely mistaken and, I am sorry to say, not so well informed as I thought he would be.

Dr. Ambedkar: I should like to be enlightened.

Pandit M. M. Malaviya: I am not saying that the Depressed Classes should wait. In a criticism of the Montagu-Chelmsford proposals which I had the honour to publish when the proposed reforms were first announced in 1918, I urged that, so far as the Depressed Classes were concerned, it is particularly a question of education, and I pleaded—and I still plead, and the Congress has pleaded—for universal primary education. It has pleaded all the years of its existence; and if the Government of India, which commanded all the resources of the country, had spent sufficient money on promoting primary education among the people, I am sure the words "Depressed Classes" would have been a matter of history by this time—long before this time. We have desired that they should receive elementary, primary education, that they should receive secondary education, that they should receive higher education. I have the honour to be the Vice-Chancellor of a University, the Benares Hindu University, and there a student of the Depressed Classes gets a seat exactly as a student of any other class does; there is absolutely no distinction. And those who have received

education give an excellent account of themselves, even, if I may say so, as my esteemed friend Dr. Ambedkar has given.

Dr. Ambedkar: I am still an "Untouchable" in society, although I am educated. Education has not raised me out of that.

Pandit M. M. Malaviya: I beg your pardon; you are not an Untouchable; you are a dear friend and colleague—a brother with whom your most orthodox friends have the pleasure to meet and work, and you know that they work together with you. To-day there are more Brahmins working in the cause of the Depressed Classes than the representatives of any other class. I think that is a fact which my friend, Dr. Ambedkar, will admit.

Now, the second point, My Lord, which I should like to touch upon is the question of direct and indirect election. I fear that the remarks which Mahatma Gandhi made yesterday in this connection were somewhat misunderstood. Mahatma Gandhi and the Congress are pledged to adult suffrage. The Congress swears by it, if I may say so. Mahatma Gandhi stands for it. What Mr. Gandhi said yesterday was not intended to detract in any way from his advocacy of adult suffrage, but to point out a way in which any practical difficulties which might be felt in introducing it might be overcome. I am sure, Sir, that the members of this Committee know that the Congress has long been advocating a most extensive franchise, and for some years past it has been advocating adult suffrage. It is not possible for the Congress to depart from that line. It is not possible for Mahatma Gandhi to depart from that line. When yesterday he spoke approvingly of Lord Peel's suggestion, the object, as I understood it, was to show that, if it was felt that there were practical difficulties in the way of extending the franchise to all the adults in the country—if the hugeness of the constituencies, if the great distances that would divide parts of the same constituencies and other similar considerations stood in the way of it—it was possible to find a way out by adopting the method that he suggested. It was most certainly to introduce the principle of adult suffrage that Mr. Gandhi suggested that plan. He has not approved the idea that an indirect method of election should be adopted whereby the people should feel that they were kept out of the right to vote.

Sir Tej Bahadur Sapru: I listened with great attention and interest to Mahatma Gandhi's exposition of the principle of adult suffrage, but I am very much of the view that it is much lower than that recommended in the Nehru Report. If I am wrong, will you please correct me?

Sir Samuel Hoare: Pandit Malaviya, it would still be direct election. You are now making an argument in favour of adult suffrage. That was not the subject to which the Committee was addressing itself yesterday, so I understand. That subject was the alternative of direct and indirect election; and, as I understood Mahatma Gandhi's speech, he was in favour of adult suffrage, but he was also in favour of indirect election.

Mr. Gandhi: Yes.

Pandit M. M. Malaviya: In order to help to establish adult suffrage.

Sir Samuel Hoare: Yes, exactly; but it is none the less indirect election.

Pandit M. M. Malaviya: That is quite right—to that extent it would be; but I hope, My Lord, that everybody will agree that what Mr. Gandhi said was meant to suggest a way out of the practical difficulties which might be felt, and not to abandon the idea of adult suffrage.

Lord Peel: That is what I was saying too. We are exactly together.

Mr. Iyengar: I am glad. Lord Peel is in favour of adult suffrage after all!

Pandit M. M. Malaviya: My Lord, I have not been able to follow Lord Peel entirely. I have felt that he did not approve of adult suffrage. He did not approve of even an extensive franchise.

Lord Peel: Well, I was not really discussing that point; I was not saying anything about adult suffrage at all yesterday.

Pandit M. M. Malaviya: Then I take it that Lord Peel is not opposed to adult suffrage! Indeed, it would be a matter of surprise if he were, because our British fellow-subjects have moved step by step towards adult suffrage. The whole history of the last hundred years proves it. They have moved from point to point from a very limited suffrage. The first large step they took was in 1832, then in 1868, then in 1880, then in 1917, and lastly in 1928. It would be a matter of surprise if Lord Peel, representing the British people, should suggest to us that we should follow a reverse process—that we should now go down to a much smaller electorate than exists in India to-day. We have an electorate which is larger than the electorates which existed in the earlier days in England, and our wish and prayer has been that the franchise should be extended, should be made adult franchise or brought as near to it as possible; and I will tell you, My Lord, the reason for it. I believe that Congressmen generally believe that the vote is a very powerful factor in raising the political status of those who exercise it. I myself believe that the three things essential for the uplift of my people are the universal vote, universal primary education, and universal conscription or the right to bear arms. If I can arm my people with the universal vote I shall have done a great deal to lift them up politically. I wish the proudest men in the country to have to go to the humblest of my people to ask for his vote or her vote, for I know what effect that has already had in my country.

I therefore request that this question should be considered from the point of view of the ultimate good of the people who will be affected by the vote. The method of indirect election may be adopted as a temporary expedient where the difficulties are great

in the way of adopting adult suffrage. There are other means by which those difficulties can be solved. The number of members of Parliament should be increased and the constituencies should be made smaller than they are at present. But I hope that, in view of the politically elevating effect of the vote, universal suffrage will be kept as the goal before our minds, and that we shall try to approach it as far as possible even in the next instalment of reforms.

My Lord, my friend, Mr. Mudaliyar, in speaking of the Congress, fell into a mistake. He suffers from the fact that he has not had the honour of attending the Indian National Congress meetings for some time past; he is not, therefore, in touch with what happens there. He therefore does not know how the work of the Congress is done, My Lord. I claim that it is the most democratic body to-day in India and perhaps in any other country. It is not the personal influence of one man that decides questions there; all the members who desire to may take part in the discussions, and the results are arrived at after the fullest deliberation. To say that the decisions of the Congress evidence personal success rather than the success of democratic principle is to betray ignorance of what actually happens at the Congress.

My Lord, I wish to say one word about the question of Second Chambers too. Here again, we should not forget that we have a history of Reforms in India. We already have a Second Chamber, in the existing Constitution. When Mahatma Gandhi spoke yesterday, as I understood him, what he said was that he was not frightened by the idea of only one Chamber. That is very different from saying that he was opposed to the Second Chamber. In the Nehru Report, the Congress advocated a Second Chamber; and that is the prevailing view in the Congress, so far as I know, to-day. But Mahatma Gandhi made it clear that, if one Chamber commended itself to our people on the whole, that is not a matter which would frighten him or the Congress people, and that they would be able to consider that question fully on its merits. But, so far as the general opinion in the country is concerned, as I have been able to sense it, it is in favour of the establishment of a Second Chamber; and I submit, My Lord, it is very desirable at this stage of our progress, and in view of the situation in which we are placed, that it should be so. Sir Tej Bahadur Sapru reminds me that the Nehru Committee recommended that the Provincial Legislatures should be electorates for the Second Chamber. That is a matter which has to be gone into.

Dr. Ambedkar: That Report was abandoned by the Congress.

Pandit M. M. Malaviya: No, it was not abandoned. It was not pressed, because there were differences; but whatever sound propositions have been embodied in it have not lost their value because it was not accepted all round. My Lord, in view of the fact that we are now discussing a federation of all-India, I submit that the question of a Second Chamber has become all the more important, and I think there should be a general agreement in

regard to this question. In his very valuable book on " Second Chambers ", Sir John Marriott, after discussing the constitutions of most countries, says:—

> " One conclusion emerges, on the threshhold, irresistibly: that no important State, whatever be its form and government, whether federal or unitary, monarchical or republican, presidential or parliamentary, constitutionally flexible or contitutionally rigid, is willing to dispense with a Second Chamber. Of Sovereign States only Turkey, Jugo-Slavia, Esthonia, Latvia, Lithuania, and Bulgaria adhere to the unicameral system. States which are component parts of a Federal State are, on the contrary, frequently unicameral. Some of the Canadian Provinces are in this category, but they are not ' States ', and, though extensive in area, contain as yet small populations."

Then he says:—

> " The preceding pages disclose the fact that, of the great States of the modern world, three of the greatest have actually tried and abandoned the experiment of a single legislative Chamber."

I submit, therefore, that there is a large body of opinion in favour of the constitution of a second Chamber.

My Lord, I do not wish to take up more time at present. I only repeat the hope that some method may be devised by which questions which are of primary and outstanding importance may be taken in hand at an early stage, and that these other questions may come later on.

Colonel Haksar: Lord Chancellor, I much wish I could avoid impeding the progress of our work, but much that has been said during the last three days impels me to intervene even at this late stage of the debate. I am led to take this course from a sense of responsibility, which, in addition to being general, as a member of the Indian States Delegation, is also particular. I feel sure, Lord Chancellor, that if His Highness The Maharaja of Kashmir had found it possible to come, he would have been amongst the newly added members of this Committee. I therefore speak from the general point of view of the States as well as from the particular point of view of the Kashmir State—than which, I venture to think, there is no more important unit of the Indian polity. Kashmir to-day guards, and, if the Federal Government is formed, will continue to guard an important and extensive section of the Indian Frontier. From that point of view, I should think the attitude of the Kashmir State towards the problem which we are all endeavouring to solve is worthy of careful consideration.

Lord Chancellor, my endeavour is going to be to deal with the practical, as distinguished from the theoretical aspects of our problem; and I am happy to think that what I regard as the

practical aspects, have been found by several speakers, who have preceded me, to be also practicable.

I shall first attempt to answer some of the questions grouped under Head 2; and having done that, I shall try to justify those answers and to elucidate the reasons which have determined the general attitude of the Indian States Delegation. The first sub-head under Head 2 relates to the method of selection of representatives for each Chamber of the Federal Legislature by individual, as well as by groups of, States. The view has, I think, found as much support as opposition that, at any rate for the purpose of the Upper Chamber, the method applied should be nomination. Now, so far as regards the States that in terms of population, area and revenue are large enough individually to return representatives to the Upper House, there is no difficulty about the nomination of their representatives by their Governments. When, however, we come to the other class of States that will have to be grouped for purposes of representation, there at once arises the question of the basis of eligibility; *i.e.*, what strength of population, or what extent of territorial area, what amount of revenue, or a combination of all these three factors, will entitle to representation. This question does not directly arise under the Head I am discussing, yet it is necessary to draw attention to the fact that the basis of eligibility will have to be determined before grouping can be effected.

Your groups would have to be based upon what you determined to be . . . .

Chairman: The number?

Colonel Haksar: Not so much the number as the population of the people in the group that would qualify them to represent you, or the area, or the revenue, or all those factors together. When the grouping has been effected, the various groups will naturally constitute electoral colleges. Again, the grouping can only be suitably effected if the total number of seats to be accorded to the States is determined. In so far as each group will probably nominate only one representative, it has therefore to be appreciated that the selection of one representative will involve, perhaps necessarily, a process akin to election. I think the final selection will necessitate preceding selections by each member of the group; and from amongst the various persons thus selected there will have to be found ultimately one person, probably by election. I cannot say with any confidence that the method recommended or suggested would be as I have indicated; but, if it is, the process I have indicated should go some way towards salving the doctrinaire's conscience, even though the electors involved in this process were originally nominees of the individual States forming the group.

I am not at this stage concerned with formulating replies to every one of the questions which occur under Head 2. I am more concerned with examining from the practical point of view some of the opinions which have been expressed. I shall first

deal with the claim as regards the reservation of seats. The question does not arise here; but, as it was raised in one of the speeches, it is difficult to pass over the point. The reservation of a proportion of the seats as compared with the total strength of each Chamber has been claimed. In regard to this claim, Lord Chancellor, I venture to submit that it extends beyond its legitimate confines a problem which is essentially parochial. If I may be permitted to be frank, it is calculated to introduce into harmonious politics elements which must conduce to disharmony, discord and an infinite variety of resulting evils. Assuming that the claim was not intended to operate as I have envisaged, then its operation would manifestly be unfair in its own legitimate sphere; but that, of course, is not quite my concern. Then there is the practical aspect of the problem. I suggest that, so long as there are States which will have to be grouped for purposes of representation in both Houses, you have merely got to visualise the difficulty of securing the proportion of the total strength of each Chamber asked for to realise that it would be impracticable to give effect to the claim.

At this stage I should like to quote one sentence from a speech in which occurs the point which I have been discussing, in order to demonstrate its impracticability. That sentence reads as follows:—

> "I need not remind Sir Tej Bahadur Sapru that, although certain things are very desirable in certain directions, limits and exceptions have, at least for the time, to be made with regard to certain matters."

I ventured to remark that the idea of representation in the Upper Chamber by nomination has received as much support as opposition. In regard to the Lower Chamber, the balance of opinion seems to be in favour of the elective principle. The gist of the argument employed in support of this opinion is that the Lower House should be a popular, or to use the exact word, a national Chamber. While insisting on the principle formulated, there has been evidence of a very friendly disposition towards the States, in recognition probably of the impracticability of the immediate enforcement of the principle. Some speakers, in order to make the task of the States easy, have expressed their willingness to permit a duration of time within which the principle should be introduced. Nevertheless it is insisted that the principle shall ultimately apply; and this view is supported by the fundamental maxim that there should be no taxation without representation. I should like to examine this position from a practical point of view here and now. First of all, it seems to me that the problem has been viewed not in relation to the entire content of the Federal scheme as it emerges from the Appendix of the Second Report of our sub-Committee, but in relation only to one element of that scheme, namely taxation. Apart from that, however, I think it is necessary for me to suggest that, so far as the majority of the subjects that are proposed to be wholly or partly federalised

are concerned, the fortunes of the country would not be seriously affected by the character of the representatives of the Federal units who would be called upon to discuss the questions that come before them in the Federal Legislature. Those fortunes would not be bettered if the representatives had been elected by a popular vote, nor worsened if they had been nominated by the Governments of the federating units. I submit—and I honestly myself subscribe to the plea—that this is not the occasion for scoring debating points; but honestly, though I anxiously desire to eschew flippancy I should like to ask the question whether the opinion expressed or the votes recorded by the representatives of the States are likely to be different, whether those representatives have been elected by the subjects of the States or nominated by their Governments, in regard to question relating to Aircraft, Shipping and Navigation, Lighthouses, Ports and Quarantine, Federal Audit, Commerce, Stores and Stationery, Geological Survey, Botanical Survey, Inventions and Designs, Copyright, Survey of India, Meteorology, Census, Statistics, Immovable Property in possession of the Governor-General in Council, etc., etc.

Mr. Iyengar: If there is going to be no difference of interest, why not agree to it?

Colonel Haksar: I am dealing with the point of whether there is any conflict of interest between the subjects and Rulers of the States, and I repeat that the question of the method of representation has been viewed less from the standpoint of the content of our Federal scheme than from that of accepted constitutional principle. It has been urged that

> "there is no conflict of interests between the Rulers and their own subjects where Federal burdens, for instance, are imposed for the administration of Federal subjects by those in charge of Federal administration."

Yet it seems to me that the reason for insisting upon the elective principle is merely that it is assumed that the interests of the subject and the Ruler clash, and that consequently the nominee of the Ruler would act against the interests of the subject.

Mr. Joshi: We do not assume that; that is your assumption.

Colonel Haksar: What is it, then, that is assumed? Once it is admitted that there is no clash between the interests of Ruler and subject, what difference does it make whether the person sitting in the Upper or Lower House is elected by the people or nominated by the Ruler? Once you admit there is no clash of interest, it makes no difference whether the Ruler nominates the representative or the people elect him.

Mr. Joshi: We make no assumption.

Colonel Haksar: Do you make the assumption that there is a clash of interest between Ruler and subject?

Mr. Joshi: It may come.

Colonel Haksar: I should like to say a few words, but only a few words, about another point—another angle of vision, another school of thought. If I do so, it is to point to the fact that, while the ardour for democratic principles is shared by many of us, that ardour sometimes leads us to suggestions that are somewhat out of the common. Your Lordship will recall a suggestion that representation in the future legislative organ should be according to what were tersely described as economic classes, and that it should be in accordance with the numerical strength of these classes. I could wish that the point had been further developed, not merely by definition, not from illustration of the economic classes, but also by the statement that the numerical strength of a particular class would make it eligible for representation. The school of thought that favours the construction of the legislative structure on the foundation of economic classes also prefers a unicameral to a bicameral Legislature; and this view has received support from a very important quarter. Here again, My Lord, one wishes that the idea had been developed, because it is impossible to believe it to be intended that the best brains in the country should not come together to co-operate in its administration for the purpose of its development. What I imply is that, if there is to be one Chamber only, people who are likely to sit in the contemplated Upper House would probably not get a look in if only because of their incapacity to stand the electioneering racket. But while the idea of a single Chamber receives support from a very important quarter, from the same quarter we have the expression of opinion that, so far as the States are concerned, how they would select their representatives should be left to them. That opinion was expressed in a very important quarter, and I have no doubt that the importance of that quarter is fully recognised.

With reference to the States, it was remarked that, in so far as they have agreed to come into the Federation, it is not open to them to claim that their view as to the method of returning their representatives to the Legislature should receive so much as consideration. While every assurance was given that there was no desire on the part of British India to interfere in the internal affairs of the States in an illegitimate manner, that desire is perfectly consistent with the exercise of legitimate interference. In other words, in so far as the States have agreed to join Federation, and Federation is to be about matters of common concern, the question of the method of returning representatives to the Legislature is also of common concern. My Lord, I would only observe that this argument would apply when Federation is formed. It does not apply before it is formed.

Concerning the entry of the States into Federation, one speaker was perturbed at the thought that there was a danger of the Indian Federation turning out a " mammoth " one, if each State is represented in that Federation; and, as he considered this unthinkable, he feared that, in the alternative, some States would be left out in the cold; and this would be inconsistent with the ideal we have

set before ourselves that, in this new constitution, every area should be represented. My Lord, I submit that, so long as the idea of grouping is there, the " mammoth " will not be exhumed from the geological strata; and I would add that this idea of grouping also eliminates the possibility of any State being confined to the frigidarium. The only question that remains is that the groups would have to be large enough in terms of population, and possibly also of area and revenue—but population is the vital factor as States exist to regulate the lives of the people—to be eligible for representation; and Your Lordship will recall that I raised this question of eligibility at the very beginning of my remarks.

I feel that I have not yet entirely met the speaker's point of view. He drew attention to known Federal States and suggested that the largest number of States constituting a Federation is 48, in the United States of America. This, if I may be permitted to say so, is rather in the nature of a *non sequitur*. The implication would almost seem to be that known standards should not be transgressed, and, therefore, possibly the number of federating units in India should not exceed 48.

Dr. Ambedkar: I did not say anything of the sort.

Colonel Haksar: My Lord, need I repeat the oft repeated statement that the conditions existing in India have no parallel? It has been generally agreed that by federation alone can India become one country for the purpose of matters which are common to the whole country and obtain what it desires, namely, responsible self-government. Therefore it appaers to me to follow that the creation of the Federal State is the paramount consideration, and that object should be maintained at any cost. It also follows that the Indian Federal State in its composition must be the natural product of subsisting conditions in India. The differences in the component elements of the Australian, Swiss, and Canadian States, of the United States of America, and, indeed, of the Old German and Austrian Empires, resulting from the conditions peculiar to these countries, are an argument—and I venture to submit a conclusive argument—in favour of constituting the Indian Federal State in accordance with the peculiar conditions of India.

My Lord, may I at this stage stray from the point that I am immediately discussing, to say that these remarks of mine apply also to other factors of our problem, and more particularly to the question of the method of representation? I have to make this observation here because of the insistence on the elective principle, even in the Upper House. It would appear that the States in claiming to nominate their representatives were suggesting a method unknown to federal constitutions. Indeed, it was boldly asserted that the old German Empire was the only example of a Federation in which the Governments of the States nominated their representatives. My Lord, I speak with great diffidence in the presence of so many eminent constitutional lawyers, but am I very much mistaken in saying that, in the senior Dominion in the British Empire, Canada, the Governor-General nominates for

life all the 72 members who compose the Senate? May I also say that our future Federal Upper House would have far greater latitude in the expression of opinion than had the German Bundesrat, where the Ambassadors spoke to definite instructions.

My Lord, here I must correct what I can but regard as a misconception. It was agreed that the States should be in the Federal Executive; but it is argued that, so long as the representatives of the States came into the Legislature by nomination, the essence of collective responsibility will be destroyed. This too seems to me *non sequitur*. The comment offered by the speaker results from the apprehension that the members of the Executive will be subject to "divided mandates". My Lord, in the case of representatives of the States in the Legislature, I deny that their representatives would discuss or vote according to instructions. But, in the case of people from the States who would find seats in the Executive, there can be no question of mandate, if only because those men would not be serving officials of the States; and I think it was made clear last year that, not servants, but people who had experience of States would be members of the Executive.

Dr. Ambedkar: Why by nomination?

Colonel Haksar: In my opinion, because you concede the right to nominate; and it is understood that the people nominated would not be the officers serving the State. It is obvious that they would be people who know the States from the inside, but not people necessarily open to receive mandates from the States. That is where the misconception comes in. I think that the idea of nominating the representatives has been interpreted to imply that those people who eventually come into the Executive would necessarily be servants of the State. That is not what I conceive the position to be. Whereas those who sit in the Upper House may be Ministers and may be servants of the State, it does not necessarily follow that those who are members of the Executive are also servants of the States.

My Lord, I might discuss at this stage the practicability of the new scheme which you endeavoured yesterday to interpret to us with an accuracy commensurate with your grasp of the scheme; but, on second thoughts, I think they were right who felt that you were not sponsoring the scheme, and therefore the time to discuss it would be when the author is present. Therefore I pass on from confederation to notice one or two other points that also arise from the views that have been expounded.

One of the points with regard to which I would like to offer a few observations is the apprehension that, if people who are drawn from the States and intended to represent the point of view of the States, but not necessarily representatives of the States, are in the Executive, British Indian politics are bound to have repercussions on the domestic policy of the Indian States. If the idea behind the apprehension be that in the result the States would be embarrassed, I must admit that it is a most generous thought;

but it might be left to the States to face this risk, if they are willing to do so.

Then I desire to make quite clear, as I have, I think, said before, that the people who will be members of the Executive will not be officers serving in the States. The other aspect of the question is, as was admitted by another speaker, that if the States are only represented in the Legislature, where policies will be conceived and initiated, they might as well not enter the Federation. The objection really seems to be that, so long as there remain any Central subjects which are not Federal, with which the Executive common to British India and the States will deal, the presence of people whose outlook on public affairs is not bounded by a limited horizon, might lead to conclusions which would be wholly different from those which might be reached in their absence. Now, I should have thought that, the broader the point of approach to any question of public policy, the greater guarantee there was of a sound solution; and therefore I have not been able to appreciate that point of view because I have said that, once it is guaranteed that the representatives—quite inaccurately called representatives of the States—are members of the unity, their presence would lead to nothing else but a conclusion and a decision which is for the good of the whole country; because it is obvious that, under the new constitution, the matters that will be discussed in the Executive would not be Provincial matters—for the Provinces would have full autonomy—they would not be matters relating to groups of Provinces. They would be matters relating to the whole of the country; and therefore, if you bring to bear upon those questions the points of view of the different parts of the country, you only ensure sound conclusions.

I do not think that I need go on further. I would merely echo the words of our esteemed friend, Pandit Malaviya. If I might summarise what he said in that portion of his speech it was this. The paramount consideration is to create a State in India in which no part will stand outside that State. The paramount consideration is to unite the country. If that be the paramount consideration, I say that that object should be achieved at all costs, and that nothing should be allowed to come in the way of the attainment of that object.

Dr. Ambedkar: Not at all costs—not at our cost!

(The Committee adjourned at 1-15 p.m.)

PROCEEDINGS OF THE TWENTY-SIXTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 21ST SEPTEMBER, 1931, AT 11-30 A.M.

Statement by the Secretary of State for India regarding the Suspension of Gold Payments in the United Kingdom.

Sir Samuel Hoare: Lord Chancellor, You are a very considerate Chairman, and on that account I venture to ask you to let

me, in the course of two or three minutes, make a short statement that, whilst it does not concern directly the detailed subjects we are going to discuss this morning, none the less deals with a question which, I am sure, is in the mind of every member of this Committee this morning.

I cannot help thinking that you gentlemen will expect me to refer in a few sentences to the announcement made this morning regarding the suspension of gold payments in this country. For sterling to be divorced, even though only temporarily, from gold, is an event of international significance and I have no wish to minimise its importance, not only from the point of view of this country, but also from that of those whose currencies are to a greater or less degree linked with sterling. It was to avert such a happening that the National Government was formed; and all its efforts, of which the first fruits were the balancing of the Budget, have been directed to re-establishing confidence in British finance and British currency.

There is no question that our system of national finance is as sound and honest as any in the world, and that the inherent wealth and productive power of the Nation are almost limitless. Indeed, the way had already been paved for the revival of confidence in this country when a crisis broke upon us, precipitated by the action not of British citizens but of foreigners, nervous as to the conditions in their own countries and ignorant of the true position of Great Britain. For a temporary period, therefore, this country will be obliged to protect itself in the manner that has been announcd this morning.

The case must, however, be viewed in its true proportions. At a moment when almost every other country is faced with a large deficit, Great Britain is now balancing its Budget; the most crushing burdens are being willingly shouldered by the tax-payer and drastic retrenchments are being made in all possible directions. Unemployment finance has been overhauled and borrowing for this purpose has been ended. The basis for stability has thus been laid and the foundations necessary for the full restoration of confidence have, I believe, been firmly secured. His Majesty's Government are convinced that at this moment the British people will remain as steady as a rock and that they will show their faith in their own currency, standing by it in the knowledge that the whole effort of the Government will be directed to the restoration of stability.

Gentlemen, you will be looking to me to add a few words in particular on the bearing of these events on India. I feel a special responsibility in this crisis for India. Since the fixing of the rupee by Statute at 1*s.* 6*d.*, sterling has until to-day been synonymous with gold, and for all practical purposes the stability of the Indian Exchange has been based on sterling. Indian trade is financed through sterling. The greater part of India's external obligations is in terms of sterling. To follow gold, and so to increase the sterling value of the rupee at this juncture is, I am sure you will agree, out of the question. It has therefore been

decided to maintain the present currency standard on a sterling basis. I am satisfied that this is the right course for India and is the most conducive to Indian interests. The Government of India will accordingly continue the policy under which stability in terms of sterling has in the past been secured. Lord Willingdon has already announced that India must regard it as her immediate duty to devise means to weather the economic hurricane, and has declared that the Government of India is determined to maintain the principles of sound finance that India has always followed.

To those among you, expert in Indian finance and able to influence opinion, I would venture to address these words. There has been evidence for some time of a desire to convert rupees into sterling. The uncertain prospects of such action are illustrated by what has just taken place. Patriotic Indians, however, and all who are zealous for India's well-being and constitutional progress, must realise the importance of maintaining the stability of the currency. They can help by standing by the rupee themselves, and by urging their friends to stand by the rupee as well. A break in the Rupee Exchange, on which the structure of Indian finance is built, would create a financial and economic crisis of the first magnitude, the consequences of which, in these days of crisis, it is impossible to foresee.

His Majesty's Government are determined to use every means in their power to prevent such a calamity. I appeal to you, a most distinguished assembly of Indians representing almost every Indian interest—Princes and politicians, Hindus, Muslims, Sikhs, Minorities—to throw your great influence into the scales for courage, stability and determination at a moment of national trial.

Gentlemen, I am much obliged to you for allowing me to make this statement.

Head 3.

Relations between the two Chambers of the Federal Legislature.

The following points for discussion in connection with this Head were drafted by the Chairman:—

(i) *Is the constitution to provide that normally, though subject no doubt to any requirements to the contrary necessitated by safeguards, the governing principle with regard to legislation is to be that the assent of both Chambers is required to the enactment of a Bill?*

(ii) *If so, which of the two following possible alternatives shall be taken as the basis of the relationship between the two Chambers:—*

(a) *that the powers and functions of both Chambers shall be approximately equal;*

(b) *that the decisions of one Chamber shall prevail over those of the other—or possibly that in some matters,* e.g., *finance, the right of decision shall vest in one Chamber only?*

(iii) *If the deciding voice is to be vested* by the constitution *in one Chamber, in which of the two Chambers is it to be vested, and on what principles is the decision so to provide determined, having regard to the composition and method of election of each?*

(iv) *If it is to be decided that the governing principle is to be equality of powers, shall the constitution provide—*

(a) *that all Bills, including Money Bills, can be introduced in, and amended by, either Chamber;*

(b) *that the function of voting Supply shall be shared by both Chambers—presumably sitting in Joint Session, since independent amendment of Demands for Grants by each Chamber would be likely to lead to complications and confusion;*

(c) *that differences between the two Chambers, which prove incapable of reconciliation by the ordinary methods of "reference back", should be finally resolved (subject to any necessary provisions connected with Safeguards) by a majority vote of the Members present and voting at a Joint Session;*

(d) *that a Joint Session shall be composed—*

(i) *of all the Members of both Chambers, or*

(ii) *of an equal number of representatives of each?*

(v) *Shall the decision whether or not to summon a Joint Session in any given case rest with the Governor-General; and, consequently, shall it be a matter for the Government's discretion in each case to determine—*

(a) *whether resort should be had to Joint Session to resolve a difference, or*

(b *whether the ordinary principle indicated under Point* (i) *of this Head should be allowed to operate, with the consequence that the Bill in dispute would lapse?*

(vi) *Shall provision be made for the elapse normally of an interval before the calling of a Joint Session? If such provision were made as the general rule, shall special provision be made for the possibility in suitable cases of decision by Joint Session forthwith,* e.g., *in the case of the Annual Finance Bill, or in other cases of emergency?*

Sir Muhammad Shafi: Though I come from what has often been described as a custom-ridden Province, I propose this morning to depart from the custom—followed last week by almost every speaker—of indulging in preliminary dissertations when expressing opinions even on specific points such as those embodied in the

questionnaire which Your Lordship has circulated to us. Some of these dissertations were, no doubt, eloquent and instructive; but, if I may venture to say, so, we have reached a stage in our deliberations when the adoption of what I might call business methods would expedite the conclusion of the task upon which we are engaged at this moment. This much, however, it is necessary for me to say—that the opinions which I am about to express are the result of prolonged discussion among the members of the group I have the honour to represent, of intimate knowledge of the social and political conditions obtaining in India, of practical experience, extending over a period of ten years or more, of the working of the existing constitutional machinery in our country, and of careful study of the relevant provisions embodied in the various Dominion Constitutions and of the two post-war Federal Constitutions of Germany and Austria.

Our answer to the first question under this Head is that the constitution should provide that normally, though subject, no doubt, to any requirements to the contrary necessitated by the Safeguards, the governing principle with regard to legislation is to be that he assent of both Chambers is required to the enactment of a Bill. I propose to summarise briefly the reasons for which we have come to that conclusion. On Friday last, my learned friend, Pandit Malaviya, read to us two extracts from Sir John Marriott's valuable work on "Second Chambers". In the first of those two extracts that learned author observes as follows:—

> "One conclusion emerges, on the threshhold, irresistibly: that no important State, whatever be its form and government, whether federal or unitary, monarchical or republican, presidential or paraliamentary, constitutionally flexible or constitutionally rigid, is willing to dispense with a Second Chamber."

In this connection it is worthy of note to observe that, not only in all the big states the constitutional machinery includes a bicameral Legislature, but in all great countries, except Russia, which have a federal constitution, a bicameral Legislature is an integral part of the constitutional machinery. This particular fact is full of significance for us, for what we intend to bring into existence in India is a Federal Legislature. It is thus clear that the teaching of history, as well as of world experience, points to the necessity and utility of including a bicameral Legislature as an integral portion of the future Indian Constitution.

But, My Lord, what about our own practical experience in India? Members of this Committee are aware that a bicameral Legislature is an integral part of the Montagu-Chelmsford Constitution, and has been in actual working for the last ten years or more. As I ventured to state the other day, for three and a half years I myself was Leader of the Council of State; and ever since the severance of my direct connection with the Council of State I have very naturally been a close student of the working of our central legislative machinery in India. As a result of that first-

hand experience, as well as of close observation, I had no hesitation in saying that the Council of State has exercised a steadying influence on the working of our legislative machinery which has been of the highest service to the people of India. One illustration alone I propose to give to this Committee to-day of the stabilising influence of the Council of State on the working of our legislative machinery. It is, I have no doubt, within the knowledge of all the members of this Committee that, when the Montagu-Chelmsford Reforms were introduced in India, the Congress decided to boycott the new Constitution, as a result of which no representatives of the Congress sought entry, either into the Legislative Assembly or the Council of State, in 1920-21. But subsequently, after the lapse of two years—I think in 1923—what was then known as the Swarajist Party in the National Congress, decided to enter the Central Legislature, and obtained a decision from the Congress itself, permitting them to seek election at the following General Election. The result was that, in the second Legislative Assembly, the largest group was that of the Swarajist Party. This Swarajist Party came into the Legislative Council with the professed object of non-co-operating from within; and, but for the stabilising effect of the action taken by the Council of State, I have no doubt that they would have succeeded in smashing up the Legislative Assembly if a unicameral Legislature had been a feature of the Montagu-Chelmsford Reforms. Can we say for certain that, if a single Chamber were to be a feature of the new constitution, such a state of affairs would not arise in the future? We are all aware that the Left Wing of the Congress Party consists of advocates of complete independence, some of whom openly profess communistic beliefs, led by a very sincere, very conscientious, but very enthusiastic professed Communist. May it not be that, if a single Chamber forms an integral part of our new constitution, a similar catastrophic crisis may arise in the future when, in that single Chamber, this section of our Indian politicians may occupy the same position as the Swarajist Party did in the second Legislative Assembly, with the result that the whole of our constitution might be destroyed as a result of their action? This is a very grave problem to which I earnestly invite the attention of the Committee; and I ask the Committee not to be led away by any assurances that may be given now by any advocate of a single Chamber as to what is or is not likely to happen in the future. We must guard against all eventualities; and practical experience of the working of our existing constitution in the past makes it necessary for us to halt and seriously to consider whether, in a country like India, with the forces actually in operation, it should not be a matter of the gravest concern to all sincere well-wishers of the country's peaceful constitutional progress to avoid bringing into our constitutional machinery a new feature, non-existent hitherto, and therefore depriving ourselves, not only of the advantages and benefits of continuity—which, after all, is not a matter to be lightly put aside—but also laying ourselves open to very grave dangers. I

submit, therefore, that our past experience also points to the necessity, as well as the utility, of introducing or re-enacting either the same or similar provisions as are embodied in the Government of India Act, of 1919, relating to a bicameral Legislature.

My learned friend, Pandit Malaviya, told us—and if I may venture to say so, quite correctly—that not only the Congress but all schools of thought in India are unanimous in holding the opinion that a bicameral Legislature should form an integral portion of our constitutional machinery. This being the teaching of history, this being the result of ten years' practical experience of the working of our existing constitutional machinery, this being the unanimous opinion entertained by all schools of political thought in India, I confess I was somewhat surprised when I heard from the lips of Mahatma Gandhi—for whose sincerity and high idealism I entertain the greatest respect—the views which he expressed on Thursday last in favour of a single Chamber based upon an indirect electorate. I entirely agree with my friend, Diwan Bahadur Ramaswami Mudaliyar, that the scheme of a unicameral Legislature based upon indirect election, sketched out to us by our respected Mahatma, is calculated to lead not to the coming into existence in India of a really representative Government but of dictatorship. When I went home and received the full report of Mahatmaji's speech, I carefully studied those portions of that memorable pronouncement which related to these two points. Knowing that, for many of his ideas, Mahatmaji derives inspiration from Tolstoy, it occurred to me to examine the provisions of the Russian Federal Soviet Republican Constitution, to see if there was any resemblance between the scheme sketched out by Mahatmaji in his speech and the provisions of the Russian Constitution. I found a very strange similarity between the scheme sketched out by Mahatmaji and the position as it exists in the Russian Soviet Republic. I am sorry Lord Peel is not present here this morning, for I should like to have him here to listen to one short sentence that I am going to utter now. Mahatmaji was very pleased to find himself in the same boat as Lord Peel. I wonder if Lord Peel too derived his inspiration and got his ideas from Lenin!

It is clear, therefore, that from every point of view it is essential, in the interests of India and of the people of India, that a bicameral Legislature should form an integral part of our constitution. Once that principle is conceded, I venture to submit that *it ipso facto* follows that, ordinarily speaking, in matters of legislation the assent of both Houses should be regarded as essential. I venture to submit that an emasculated Upper House would be an utterly useless luxury and would not serve the purpose for which an Upper House ought to exist for it would then have no steadying or stabilising effect over the whims and idiosyncrasies of the Lower House, should occasion call for it.

Not only is a bicameral Legislature an integral part of our existing constitutional machinery, and therefore, for the purposes of continuity as well as upon general principles, these or similar

provisions should be re-enacted in the new constitution, but a reference to Section 53, last paragraph, of the Australian Constitution, will also show to the members of this Committee that that is exactly the position in the Dominion of Australia as well. For these reasons I venture to submit that the answer which I have given on behalf of my friends, and for myself, to the first question put by you, Lord Chancellor, is the answer which ought to be unanimously accepted by this Committee.

Chairman: Will you kindly give me the reference to the Australian Constitution again? It is Section 53, is it not?

Sir Muhammad Shafi: Yes, the last paragraph of Section 53.

Chairman:

> "Except as provided in this Section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws."

Sir Muhammad Shafi: If our answer to the first question is right and should be agreed to by this Committee, then I venture to submit that the answers to the remaining questions under this Head become at once self-evident.

The second question is:—

> "If so, which of the two following possible alternatives shall be taken as the basis of the relationship between the two Chambers:—(*a*) that the powers and functions of both Chambers shall be approximately equal; (*b*) that the decisions of one Chamber shall prevail over those of the other—or possibly that in some matters, *e.g.*, finance, the right of decision shall vest in one Chamber only?"

Putting the matter of finance aside for a moment—for that forms the subject of a distinct question under sub-head (iv)—I venture to submit that the answer to this question ought to be that the powers and functions of both Chambers shall be approximately equal. That, I submit, is self-evident from what I have already said in reply to the first question; and I do not wish to repeat the arguments which I have already given in connection with the general question of bicameral or unicameral Legislatures, which cover this point as well.

The third question is:—

> "If the deciding voice is to be vested *by the constitution* in one Chamber, in which of the two Chambers is it to be vested, and on what principles is the decision so to provide determined, having regard to the composition and method of election of each?"

In view of our answer to the first and second questions, this question does not arise.

I come now to the fourth question:—

> "If it is to be decided that the governing principle is to be equality of powers, shall the constitution provide—(*a*)

> that all Bills, including Money Bills, can be introduced in, and amended by, either Chamber?"

I propose to deal with this clause separately from the rest. Our answer to this question is that all Bills, except Money Bills, may be introduced in, and amended by, either Chamber. The case of Money Bills, we think, stands apart. I think I am right in saying that at present Money Bills can be introduced in either House.

Mr. Iyengar: It depends upon what the Money Bill is.

Sir Muhammad Shafi: There is nothing in the Government of India Act laying down that they must be introduced in the Legislative Assembly.

Mr. Iyengar: That is correct.

Sir Muhammad Shafi: And I have a vague recollection of a Money Bill being introduced in the Council of State when I was a member of the Government of India. It is Section 67-A.

Sir Tej Bahadur Sapru: But under Section 67-A, clause 5, the Budget is only put to the vote in the Lower Chamber.

Sir Muhammad Shafi: The Budget is different from Money Bills. That is under sub-clause 2. I am coming to that presently. I am speaking of legislation on these matters.

Sir Tej Bahadur Sapru: Quite so, there is no bar.

Sir Muhammad Shafi: There is no bar. We are of opinion that a change should be made with regard to Money Bills—that in future, as in the constitutions of the other Dominions, Money Bills ought to be introduced in the Lower House. A reference to Section 60 of the South Africa Act, Section 53 of the Australian Constitution Act, and Section 53 of the Canadian Act, will make it clear to the Committee that, in all these Dominions, Money Bills are introduced in the Lower House. We think, for the sake of uniformity, if for no other reason, similar provisions should be embodied in the Indian Constitution. That is the sole change which we advocate so far as legislation is concerned.

Now the question embodied in sub-clause (*b*) of this sub-head is:—

> "That the function of voting Supply shall be shared by both Chambers—presumably sitting in Joint Session, since independent amendment of Demands for Grants by each Chamber would be likely to lead to complications and confusion."

We are of opinion that, in regard to this matter, the existing practice should continue. It has worked well during the last ten years or more, and no criticism has been advanced by anybody upon it. Voting of Supply is at present the function of the Legislative Assembly, and the Lower House ought to continue to have that privilege and power. A reference to Section 67-A (5) of the Gov-

ernment of India Act, 1919, will show the existing position. We think Section 67-A (5) should be re-enacted in the new constitution.

The question embodied in sub-clause (*c*) of sub-head (iv) is as follows:—

> "That differences between the two Chambers, which prove incapable of reconciliation by the ordinary methods of 'reference back,' should be finally resolved (subject to any necessary provisions connected with Safeguards) by a majority vote of the Members present and voting at a Joint Session."

The provision embodied in the Government of India Act, 1919, in connection with this matter is to be found in Section 67 (3).

We think that, with one exception, to which I shall refer in connection with the next question, the same provision should be embodied in the new Act.

Mr. Iyengar: This Section 67, sub-section (3), says:—

> "If any Bill which has been passed by one Chamber is not, within six months after the passage of the Bill by that Chamber, passed by the other Chamber either without amendments or with such amendments as may be agreed to by the two Chambers, the Governor-General may in his discretion refer the matter for decision to a joint sitting of both Chambers."

Are we providing for an obligatory settlement?

Sir Muhammad Shafi: Wait a minute. If you had waited you would have seen the exception I am going to make presently. I said with one exception the same provisions should be re-enacted. Now, the exception which I am going to suggest is covered by sub-head (v):—

> "Shall the decision whether or not to summon a Joint Session in any given case rest with the Governor-General; and, consequently, shall it be a matter for the Government's discretion in each case to determine—(*a*) whether resort should be had to Joint Session to resolve a difference, or (*b*) whether the ordinary principle indicated under Point (i) of this Head should be allowed to operate, with the consequence that the Bill in dispute would lapse?"

We are of opinion that the calling of a Joint Session in the case contemplated in sub-clause (*c*) should be obligatory, and that it should not be left to the discretion of the Governor-General to call a Joint Session or not. In sub-section (3) of section 67 the word "may" is used as the sub-section stands at present. We would suggest that the word "shall" be substituted in the place of "may".

Mr. Iyengar: You would leave it to the Governor-General to summon the Joint Session, or the Speaker of the House?

Sir Muhammad Shafi: The Governor-General must summon—shall summon—the Joint Session.

Dr. Ambedkar: Why should the Governor-General take personal interest in the legislation that is before the two Houses?

Sir Muhammad Shafi: It is not a question of personal interest. It is the machinery or the initiative to be taken.

Dr. Ambedkar: It is a matter for the two Houses. Why should the Governor-General be drawn into it?

Sir Muhammad Shafi: We think that, when a difference of opinion has arisen, the logical step resulting from it is a Joint Session of the two Houses, and we think that a Joint Session of the two Houses must be called in those circumstances, and the Bill should not be allowed to lapse; and we would make it obligatory on the part of the Governor-General to call a Joint Session.

Then sub-clause (*d*) of sub-head (iv) runs as follows:—

> " that a Joint Session shall be composed—(i) of all the Members of both Chambers, *or* (ii) of an equal number of representatives of each?"

We are of opinion that the Joint Session should be composed of all the Members of both Chambers, so that both Chambers may have a full share in the final decision which is to be arrived at as a result of the Joint Session.

The last question, question (vi), runs as follows:—

> " Shall provision be made for the elapse normally of an interval before the calling of a Joint Session?"

Our reply to this part of the question is in the affirmative.

> " If such provision were made as the general rule, shall special provision be made for the possibility in suitable cases of decision by Joint Session forthwith, *e.g.*, in the case of the Annual Finance Bill, or in other cases of emergency?"

Here again our answer is in the affirmative, and it is not necessary to give any reasons in support of that answer. It is obvious that the Annual Finance Bill must come into operation on the 1st April every year, and in consequence it is really a case of emergency, just as much as any other case of emergency; and to meet all cases of emergency there should be special provision making it possible, in suitable cases, for a Joint Session to be called at once.

These are our answers to all the questions which you have put to us, My Lord Chancellor.

Mr. Joshi: May I raise one point here? Would Sir Muhammad Shafi say that in all cases of emergency the Governor-General must call a Joint Session?

Sir Muhammad Shafi: Yes.

Excuse me for one moment. You put to us a supplementary question, not embodied in these questions, which I forget to answer.

You asked us if specific provisions regarding the relative supremacy of the two Chambers or the equality of their powers should be embodied in the constitution, or whether things should be left to work themselves out in the process of time. Our answer to that is that we want to see specific provisions embodied in the Act.

Sir Maneckjee Dadabhoy: My Lord, My task has been very much simplified by the speech made by my friend, Sir Muhammad Shafi, who, for three and a half years, led the Council of State with conspicuous ability and distinction. Though I am not prepared to agree with him on some important points which I shall stress later on, I must admit that the whole case for the Council of State has been put forward with a clearness and with an ability which could be scarcely equalled.

As regards the constitution of the Council of State, in my humble opinion, it would be too late now to contemplate the destruction of that body. It was with some disappointment and sorrow that I heard Mahatma Gandhi as well as my old friend, Pandit Malaviya, make their observations on this point; but I must say, in justice to Pandit Malaviya, that in the end he qualified his statement by agreeing to a continuance of the Second Chamber.

I personally think that it is needless to go into this question. The Simon Commission unanimously recommended the formation of an Upper Chamber. The Indian Central Committee—which consisted of some leading Members, and particularly Sir Hari Singh Gour, who has neither attachment nor affection for the Council of State—has also supported the continuance of the Upper Chamber. All the Provincial Governments have warmly supported the continuance of the Upper Chamber, some of them even going to the extent of demanding a Second Chamber in their own Provinces.

So far as regards the value and importance of the Council of State, I think that the last ten years have proved the necessity for its existence and its indispensibility. My friend, Sir Muhammad Shafi, has spoken at length upon this point. I do not propose to repeat the same arguments as he urged showing how the Council of State has, during the last eleven years, justified its existence—what an important corrective body it has been, and what an important revising Chamber it has been in revising and modifying some of the decisions of the Assembly. Unfortunately, the Council of State started with no blessing from the Legislative Assembly. As everyone knows, the relations between the Legislative Assembly and the Council of State during the last ten years have been far from harmonious.

Mr. Jayakar: Question.

Sir Maneckjee Dadabhoy: I will refer to only two Bills. One is the Finance Bill regarding Salt. When, after rejection in the Assembly, it was brought forward as a certified measure before the Council of State, raising the Salt Duty, that certified Bill was passed by the Council of State.

Sir Tej Bahadur Sapru: How does Sir Maneckjee Dadabhoy take credit for the Council of State if a Bill had been certified? Neither of the two Houses had any discretion left when the Bill had been certified.

Sir Maneckjee Dadabhoy: That is a different matter. A Bill may be certified and brought before the Upper Chamber. That does not mean that every Member of the Upper Chamber is bound to give his consent and co-operation to that Bill. When the certified Bill was brought before the Council of State almost all the Members spoke on the question and supported it. My friend knows as well as I do the dissatisfaction as regards the passing of this measure by the Council of State, or, at any rate, the Council of State giving its moral support to the Government in enhancing the Salt Duty. That caused considerable dissatisfaction and disconent among the Members of the Assembly.

Mr. Iyengar: Is it not provided that, whether the Council of State assents to the Bill or dissents from it, it shall nevertheless become Law, and that the Council of State is an absolute cipher under Section 67B?

Sir Maneckjee Dadabhoy: You must quarrel with the legislators and not with me; I am not responsible for that. The second instance I am in a position to give, is the wrath, discontent, and dissatisfaction which was created in the Assembly when the Council of State passed what is commonly known as the Princes' Bill. These two illustrations I remember myself, and I saw the manner in which the Assembly took them. Moreover, it is an open secret (many Members of the Assembly have been very frank in this matter) that there are many Members of the Assembly who even share the view that the Council of State is a defunct, superfluous, decrepit body, and that it consists of men of no consequence, and of men who are probably inferior in average ability as compared with the Members of the Assembly, forgetting at the same time the important stakes which most of those men have in the country and its good and orderly government. I do not blame the Assembly for these relations. Perhaps in a small degree the House of Commons also has not much love or attachment for the House of Lords; but in the peculiar circumstances of India, in my humble opinion, the Upper Chamber is essential, and it ought to be continued with the full powers which it at present possesses.

My friend, Sir Muhammad Shafi, has spoken regarding the Money Bills. He has stated his own opinion, and the opinion of some of his friends, that Money Bills should only be allowed to be introduced in the Lower Chamber.

Sir Muhammad Shafi: But passed by both.

Sir Maneckjee Dadabhoy: Passed by both, but originally introduced into the Lower Chamber. As has been pointed out by my friend, Sir Tej Bahadur Sapru, the present law does not make any such distinction; and I, for one, with great respect, must differ

with my friend, Sir Muhammad Shafi, in this matter. When vested rights have been created, when special rights have been given to any legislative body, I am averse to taking away those rights and those privileges without very strong grounds. There should be sufficient and ample justification before the adoption of such a course. My Lord, in the Reports—the Simon Commission Report, the Indian Central Committee Report, the Government of India's Despatch and the opinions of the Provincial Governments—I look in vain for any such recommendation as is now pressed by my friend, Sir Muhammad Shafi. I think it would be unreasonable at this stage—after so many years of working, and when the Council of State has proved its usefulness as a body—even to contemplate any such retrogression. My Lord, I will quote in this connection a passage from the Montagu-Chelmsford Report. Mr. Montagu, who was so anxious to advance India, even in the case of the Council of State, was prepared to give special powers—not only concurrent powers but some additional special powers. The concluding sentence of paragraph 279 is as follows:—

> "Further, there may be cases when the consideration of a measure by both Chambers would take too long if the emergency which called for the measure is to be met. Such a contingency should rarely arise; but we advise that, in cases of emergency, so certified by the Governor-General in Council, it should be open to the Government to introduce a Bill in the Council of State, and upon its being passed there merely to report it to the Assembly."

The recommendation of Mr. Montagu and Lord Chelmsford went far beyond what is embodied and incorporated in the present Act; and I say this in virtue of that decision—that, in the absence of any such recommendation from the Provincial Governments or the Government of India, we should not disturb the existing arrangement. My friend, Sir Muhammad Shafi, in support of his argument, referred to the Constitutions of South Africa, Canada and Australia, and suggested that we should do this for the sake of uniformity. Sir, I am opposed to the slavish imitation of any measure. Canada, Australia and other Dominions may, in their wisdom, do many things which may fit in and suit their own conditions, their own administration and their own Government; but we are not bound by that. Here again I quote what the Federal Structure sub-Committee has decided. Paragraph 25, page 21, says:—

> "But India's own practical needs and conditions must be the governing factors, and no constitution, however theoretically perfect, and however closely modelled upon precedents adopted elsewhere, is likely to survive the tests of experience unless it conforms to the needs and genius of the country which adopts it, and unless it is capable of adaptation and modification as the character of these needs is proved in the working."

This answer which was given by the Federal Structure sub-Committee, in my opinion, is quite sufficient—that we should not follow the Dominions in their precedents because the conditions in India are peculiar, and we must go only by our past experience in this matter.

I entirely agree with my friend, Sir Muhammad Shafi, in regard to what he said as to the power of the Assembly alone to pass the Budget. I do not ask that Members of the Council of State should go into those discussions and consider those demands which generally take a long time, often fifteen or twenty days' discussion, in the Assembly. We are very gladly prepared to leave all that work to our friends in the Assembly. I am not anxious that this work should devolve on the Members of the Council of State.

Now, Sir, regarding the holding of Joint Sessions of both Houses, I have to make a few observations. During the eleven years of the existence of the Montagu-Chelmsford Reforms, despite this provision in the Government of India Act, on not a single occasion has a Joint Session of both Houses been held. There were various measures as to which there was a great deal of conflict of opinion between the Assembly and the Council of State. There was a great deal of difference of opinion and conflict *inter se* among the Members of the Legislative Assembly. Though the Governor-General had power under the Act to convene both Houses and immediately settle the question, this power was not exercised by the Governor-General. The reason for that is plain and obvious to my mind. So far as ordinary legislative measures are concerned, and where the exercise of the powers of certification by the Governor-General is not necessary, why should the Governor-General identify himself with measures in which both Houses are interested? What is the necessity for the Governor-General to take upon himself the responsibility of convening a Joint Session of both Houses? Though there were so many conflicts of opinion during the last ten years, those powers were not exercised simply because the Governor-General did not think it either necessary or essential in the interest of the State to convene such a Joint Session. I am speaking about the existing state of things; and, in my opinion, a very strong objection to the holding of such a Joint Session would be this. If a Bill were rejected by the Assembly by a majority and were passed by the Council of State, what would be the result of holding a Joint Session, as both the Assembly and the Council of State are constituted at present? The Council of State has a solid official bloc. It is generally known, and is argued by our friends, that the Members of the Council of State generally support the Government. I want to be perfectly frank and put the case from both points of view. If that be their opinion, the Legislative Assembly would certainly not like a Bill which they had rejected to be discussed by a Joint Session, because the result might be that, if they rejected a Bill by a small majority only, the Joint Session might accept it with a bigger majority.

I do not wish, however, to be misunderstood in this connection. I am not for a moment urging that Joint Sessions should be dispensed with entirely. I think this power of holding a Joint Session in special cases may be very useful; and, although this power and privilege has not been exercised in the past, I shall not vote for its entire removal. I am not in agreement, therefore, with the suggestion that the word "shall" shall be substituted for the word "may" in that section.

So far as the other powers are concerned, I am quite in agreement with my friend, Sir Muhammad Shafi. The powers of both the bodies should, in my opinion, be concurrent, and nothing should be done to emasculate either House in any definite manner.

I must now refer to one important matter which has been discussed by the Simon Commission in their Report as well as in the Government of India's Despatch. I refer to the formation of the Provincial Fund, which is recommended by the Simon Commission in their Report. The Simon Commission recommend that the taxes which form the basis of the Provincial Fund should be discussed only by the Assembly and that the Upper Chamber should have no right to interfere with the decision of the Federal Assembly.

Chairman: To which volume of the Simon Report do you refer?

Sir Maneckjee Dadabhoy: It is Volume II, paragraph 159, page 132:—

> "We are therefore persuaded that the scheme suggested in Mr. Layton's report for the constitution of a Provincial Fund offers the most satisfactory means of ensuring adequate resources to the Provinces without infringing their autonomy. This Fund will be fed by the product of taxes, voted by a Federal Assembly representing Provincial Units, but collected centrally."

I am reading this because it is essential for the argument which I propose to advance.

> "Consequently, we propose that, in the financial sphere, the Federal Assembly should perform a dual function. It should be not only the representative body for the purpose of imposing taxation for the needs of the Central Government, of voting estimates, and of controlling expenditure at the Centre, but also a federal instrument for raising the necessary additional funds for the Provincial Governments."

These words are very important:—

> "but also a federal instrument for raising the necessary additional funds for the Provincial Governments. One of the reasons which have led us to reconstruct the Central Legislature on a basis of representation of Federal Units is that a body so formed will be suitably composed for performing this function. The Council of State will, as hitherto, be restricted in regard to finance to passing or rejecting Money Bills relating to central revenues, and will have no concern with the Provincial Fund Bill."

This is the point which I am now pressing before this Committee. I entirely disagree with these remarks of the Simon Commission. I am definitely of opinion that, on the very grounds which the Simon Cimmission have taken, it is essential that the power of rejecting or passing a Bill which is given to the Assembly should also be given to the Council of State.

I will now endeavour to state my reasons briefly. At this stage I do not propose to express any opinion about the merits of this Provincial Fund. I shall have another opportunity, when discussing Federal finance, to deal with this subject at some considerable length. I am only discussing here whether the Council of State also should have this power or not, and what are the reasons for taking away this power from the Upper House. How is this Fund to be created and what are the recommendations with regard to it? It is recommended that there should be created a Provincial Fund fed by specially designated taxes including (*a*) Excise on Cigarettes, (*b*) Excise on Matches and (*c*) the duty on Salt, to be transferred when the Central Budget situation permits. Sir Walter Layton has recommended that, in a short time, when the revenues of the Government of India increase by augmentation of Customs duties, Salt should be transferred to the Provincial Fund. That is the recommendation of the Simon Commission; and it is recommended that the Fund should be started. Then Sir Walter Layton made certain significant recommendations as regards the distribution of this Fund among the Provinces, as well as about the Fund's being distributed on grounds irrespective of the population of each Province. This is very important.

Now, this new Federal Upper Chamber is going to be both a House in which the Princes will take their place and one which will be attended by Members from British India. Each of the subjects which I have mentioned—Excise on Cigarettes, Excise on Matches, and the duty on Salt—must, as you will see if you examine the matter, necessarily affect the Indian States indirectly. Immediately you put those duties on, the subjects of Indian States will have to pay more for matches, cigarettes, and salt. Sir Walter Layton recommends the imposition of these taxes; but the Fund thus accumulated is not to be divided with the Indian States, but only between the Provinces, and the Indian States are eliminated from a share in the funds accumulated.

Chairman: I am very much interested. What you are saying is most important; but, in order to get my note right, would you just tell me which head you are discussing?

Sir Maneckjee Dadabhoy: I am discussing the relations between the powers of the two Chambers; and I say with all the emphasis at my disposal that it is unfair to deprive the Council of State, or the Upper House, of the power of considering any Bill sanctioning or passing the imposition of these taxes.

Then I come to this, that the Provinces, according to the recommendations of Sir Walter Layton, are only to share *per capita* in

the Fund raised at the discretion of the Government of India, but the States are not to come in, though the States are very considerably affected by the imposition of these taxes; and I say it is neither right nor fair to the States, nor is it right or fair to the other Members of the Upper House, that on such important measures as the taxation of cigarettes, which are extensively used now, they should not be consulted. There are no match factories in the Native States.

Several Members: Yes, there are.

Sir Maneckjee Dadabhoy: There may be some.

Colonel Haksar: Mysore is one.

Sir Maneckjee Dadabhoy: There may be one State; I am speaking generally of the Indian States. These are important questions of taxation, and I do not agree with the recommendation of the Simon Commission on this point.

Further, the necessity of giving such power to the Upper Chamber becomes more essential when we have got the decisive opinion of the Simon Commission that the Governor-General himself is not to exercise any power of certification for over-ruling the Federal Assembly's decisions. This you will find at page 134 of the Simon Commission's Report.

I therefore think that the existence of this power in the Upper Chamber is very necessary, and I, at least, who have been identified with the Council of State for many years, should be very sorry to see such an important power, such an important privilege, taken away from the Council of State.

Sir Tej Bahadur Sapru: My Lord, the subject which we are now called upon to discuss is, I need scarcely say, one of the most vital importance so far as the future Legislature of India is concerned. At the very outset there is one preliminary remark which I shall venture to make, with Your Lordship's permission, and it is this. If one carefully examines the questions which have been grouped under Head No. 3, it becomes quite manifest that the basis of all those questions is that the Legislature of the future shall be a bicameral Legislature. Sir Muhammad Shafi this morning discussed the question as to whether the Legislature that we are going to create shall be a bicameral one or a single-chamber one. I do not propose to go into that question at any great length; but, in view of the fact that a note of dissent has been sounded—I will not say a definite opinion has been expressed—by Mr. Gandhi, on this question, I will venture to say that, unfortunately for myself, I have come to a different conclusion from that which was suggested by Mahatma Gandhi on this particular point.

In the first place, you will not find a precedent for a Federal State being run on the system of a unicameral Legislature. Nearly everywhere—indeed, I think I am right in saying everywhere—wherever there is a federal constitution you have got a two-chamber Legislature.

Sir Muhammad Shafi: With the exception of Russia.

Sir Tej Bahadur Sapru: Well, Sir Muhammad will pardon me if I say that I am not taking Russia into consideration. I leave it to him to discuss Russian affairs.

The reason, to my mind, for a bicameral Legislature is not far to seek. It is entirely immaterial for the purposes of this argument whether the election to the Second Chamber is of a direct character or of an indirect character; but I believe that it cannot be seriously contradicted that the States and governments have also got a right to be represented in a federal constitution. It is for that reason that, generally speaking, political experience has provided for a Second Chamber under a federal constitution. The necessity for a Second Chamber under a federal constitution becomes all the greater when we bear in mind that the federation which we have in view is an all-India Federation, consisting, not merely of Provinces of British India, but also of independent sovereign States which have agreed to come into this all-India Federation. For that reason I think that we must stick to the decision at which we arrived last year. I do not think that it is essentially a question of democratic principles being violated, but it is really a question of a constitutional character; and I would therefore say that, so far as the question of a Second Chamber is concerned, I feel myself committed to that, and nothing has been said during the last two or three days which would incline me to differ from that view.

But the Second Chamber that I have in view will be of a very, very different character from the Second Chamber of which our friend Sir Maneckjee Dadabhoy is such an ardent champion. I will not say anything to annoy Sir Maneckjee or to wound his susceptibilities. I have never had the honour or privilege of being a Member of the Council of State, though, in my official capacity, I was called upon to address it twice. Let me tell you frankly that, if there is one branch of the Legislature in India which has failed to produce any impression on public minds, it is the Upper Chamber.

Sir Maneckjee Dadabhoy: Is that the view of all the governments?

Sir Tej Bahadur Sapru: That is the view of the Government of India, if you will look up its Secret Despatches. The reason is obvious. I am making no reflection upon the character of the men who are Members of that distinguished body, of which Sir Maneckjee Dadabhoy is such a distinguished advocate. When you bear in mind the constitution of that Second Chamber—the very narrow and limited franchise on which it has been elected, and the existence of an official bloc—then it does not seem to be a surprising feature of our constitution that that Chamber should not have produced really the impression which a living and vital Second Chamber has to produce in any constitution.

Sir Maneckjee Dadabhoy: Has the House of Lords produced that impression?

Sir Tej Bahadur Sapru: My answer is that there are many things in the British Constitution which I should like to follow, but there are many things in the British Constitution which ought also to be a warning to every one of us. I do not discuss the relative merits of the House of Lords and the House of Commons. I am quite content to deal with the situation in my own country.

Let me give one warning here? If you are going to have a federal constitution in which you want to incorporate the Indian States, you want to have a Second Chamber which will serve the purpose for which it is to be created. You do not want a Second Chamber which will be a drag on our progress. You do not want a Second Chamber which can take credit for things done and not done which do not belong to it. When a Bill has been certified there is absolutely no discussion left to any Chamber in the Indian Constitution; and it is idle for Sir Maneckjee Dadabhoy to say: "How well have we behaved in the Second Chamber because, when certified Bills have come to us, every one of us has warmly supported them." The answer is that you had no option in any matter of that kind.

Sir Maneckjee Dadabhoy: Have we not, besides that, modified Official Bills which have been passed?

Sir Tej Bahadur Sapru: Sometimes very wrongly.

Sir Maneckjee Dadabhoy: And you accepted those modifications. You have not asked for a Joint Session. You have accepted those modifications which the Council of State has made in your Official Bills.

Sir Tej Bahadur Sapru: If Sir Maneckjee Dadabhoy would like it very plainly from me, I do not think that there is a single Indian who will shed a tear to-day over the death of the Council of State.

Sir Muhammad Shafi: Cannot a certified Bill be rejected in the House? I know that it cannot be modified. It must be passed as recommended.

Sir Tej Bahadur Sapru: It is making a virtue of necessity.

(The Committee adjourned at 1-10 p.m. and resumed at 2-30 p.m.)

Sir Tej Bahadur Sapru: My Lord, I can say no more about the Second Chamber, because that it is not the direct matter before us under Head No. 3. Head No. 3, if you examine the terms of the various questions, concerns itself with the relative powers of the two Houses, and we are called upon to make such provision as appears right to us in regard to the powers of the one House or of the other House, or of the relation of the two Houses taken together.

Now, My Lord, I would like to remind this Committee of the present position in India. It is true that we have got two Chambers; but it is likely to be forgotten that although we have a Legislature consisting of two Chambers—a Lower Chamber and an Upper Chamber—yet the powers of that Legislature are very circumscribed by the Statute which has created it. May I, in this connection,

invite Your Lordship's attention to two particular sections of the Government of India Act. Section 63 of the Government of India Act runs as follows:—

> "Subject to the provisions of this Act, the Indian Legislature shall consist of the Governor-General and two Chambers, namely, the Council of State and the Legislative Assembly. Except as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian Legislature unless it has been agreed to by both Chambers."

Now, what I would like to point out under this Section is that this expressly provides for the assent of the two Chambers, and it also provides for the possibility of an amendment being made to any proposal, made by the Lower Chamber, in the Upper House. Let us first compare the position as it exists in regard to this matter in the Dominions. So far as Canada is concerned, the relevant section is Section 53, and I will read to Your Lordship the language of that section to show that, although it does not expressly provide for the assent of the two Houses, yet that is the necessary implication. This is the section:—

> "*Bills* for appopriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons."

In Australia it is Section 53:—

> "Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.
>
> The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.
>
> The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.
>
> The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.
>
> Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws."

With the solitary exception in regard to Money Bills, therefore, the Senate in Australia has equal powers with the Lower House. Now

let us come to South Africa. The relevant Sections there are Sections 60-63. Section 60 of the Act is as follows:—

> "(1) Bills appropriating revenue or moneys or imposing taxation shall originate only in the House of Assembly. But a Bill shall not be taken to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties.
>
> (2) The Senate may not amend any Bills so far as they impose taxation or appropriate revenue or moneys for the services of the Government.
>
> (3) The Senate may not amend any Bill so as to increase any proposed charges or burden on the people."

Then Section 61 says:—

> "Any Bill which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation."

Section 62 says:—

> "The House of Assembly shall not originate or pass any vote, resolution, address, or Bill for the appropriation of any part of the public revenue or of any tax or impost to any purpose unless such appropriation has been recommended by message from the Governor-General during the Session in which such vote, resolution, address, or Bill is proposed."

At this stage I shall not read Section 63, which deals with a joint sitting, with which I shall deal later.

That is the position. Therefore, bearing in mind the constitutions of the various Dominions and the present position, I am right in saying, I hope that the powers of the two Houses in the Dominions and in India at present are equal, except that, in regard to Money Bills, there are certain constitutional provisions of a special character to be found in the constitutions of the Dominions. The whole position has been very well reviewed by Sir John Marriott in his book, and I will read one particular passage from that book so as to save a great deal of argument on my part. At page 234 of his book he says:—

> "As regards Finance the powers of the English Upper House are inferior to most and superior to none. In Switzerland Money Bills may be introduced indifferently in either House, and, according to a high authority, the same is true of no less than twenty-one States of the American Union. The Federal Senate, though it has no power of initiation, has the right not only to reject but to amend Money Bills; and the right is freely exercised. In France a Bill 'concerning the opening of a Budget or the creation of a tax' must originate in the Chamber of Deputies, but the Senate has complete powers of rejection, and may even originate a 'Bill bearing on Budgetary expenditure.'"

Then he sums up:—

> "Most Second Chambers have the power of rejection. Several have the power of amendment as well. The power of the Australian Senate is somewhat curtailed, and that of the South African still more so. But no Second Chamber can possess less authority over Finance than our own."

Now, My Lord, the questions which directly arise are these:—Are the powers of the two Houses in the Federal Constitution that we contemplate, going to be equal? Are there going to be any special provisions with regard to Money Bills? Are you going to give the Senate or the Upper House the power to amend any Bills passed by the Lower House, or are you going to give the Senate a power of making suggestions or making references to the Lower House and, if so, what is going to be the ultimate solution in case there is a deadlock or a conflict between the two Houses? These are the questions that arise out of these various constitutions.

Speaking for myself, I venture to think that, except in regard to Money Bills—which, in my humble opinion, should originate in the Lower House—in all other respects the power of the two Houses should be equal. You will find in actual practice that this conduces to a great deal of economy of time, and at times it is found very convenient by the government of the day to have the power of introducing a Bill in the Upper House also. Exception is made, no doubt, in respect of Money Bills, as I have already pointed out. Therefore I suggest that, save as regards Money Bills, we should agree to the power of the two Houses being equal.

As regards Money Bills, my submission is that they should originate in the Lower House, though, as pointed out by Sir Muhammad Shafi, the two Houses should have the power of passing the Bill. But it is conceivable that, on certain occasions, there may be a deadlock; and how are we going to solve that deadlock? Most of these questions were considered by the Bryce Committee. I am not going to make, in all respects, exactly the suggestions contained in the Report of that Committee, but I should like to follow the well-established practice in one or other of two Dominions. Whenever a conflict arises in Australia, you have a particular procedure prescribed by the Commonwealth of Australia Act which has got to be followed there. Similarly, there is a particular procedure prescribed by the South Africa Act. In substance, the principle followed in both countries is exactly the same, though in one or two respects there is a great difference between the two. Now, so far as South Africa is concerned, the relevant section in the South African constitution is, I believe, Section 63. It says:—

> "If the House of Assembly passes any Bill and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Assembly will not agree, and if the House of Assembly in the next session again passes the Bill, with or without any amendments which have been made or

agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Assembly will not agree, the Governor-General may during that session convene a joint sitting of the members of the Senate and the House of Assembly. The members present at any such joint sitting may deliberate and shall vote together upon the Bill as last proposed by the House of Assembly and upon amendments, if any, which have been made therein by one House of Parliament and not agreed to by the other; and any such amendments which are affirmed by a majority of the total number of members of the Senate and House of Assembly present at such sitting shall be taken to have been carried, and if the Bill, with the amendments, if any, is affirmed by a majority of the members of the Senate and the House of Assembly present at such sitting, it shall be taken to have been duly passed by both Houses of Parliament: Provided that, if the Senate shall reject or fail to pass any Bill dealing with appropriation of revenue or moneys for the public service, such joint sitting may be convened during the same session in which the Senate so rejects or fails to pass such Bill."

Last year, when I dealt with the subject, I commended to the Committee the South African model as preferable to the Australian model. My reasons were these. First of all, under the Australian Constitution, there is provision for dissolution. We need not have that in India. Secondly, under the South African Constitution, the majority provided is a simple majority, that is to say, a majority of the men present at the Joint Session; whereas, if you go to the Australian Constitution, you will find, first of all, that there must be a dissolution, and then there may be a Joint Session. I will just point out to the Committee that section. Section 57 provides:

"If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the

Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one house and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and the House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent."

As I have just pointed out, it seems to me that the South African model is much simpler, and will be more suited to the needs of our country. There does not seem to me to be any very strong and cogent reason why (I am speaking with special reference to India) there should be a dissolution both of the Senate and of the Lower House whenever a deadlock like that arises, nor does it seem to me to be very necessary that the Governor-General (or whoever be the authority in whom you may vest the power of calling for a Joint Session) should wait for a certain period—three months or six months. If the deadlock arises out of a Bill which is of a very urgent character, in the public interest there is no reason why the Governor-General, or whoever be the authority vested with that power, should not convene a Joint Session immediately.

Similarly, I say that, in regard to the power of amendment, you will find that the Australian Constitution provides for an absolute majority, whereas the South African Constitution provides for a majority of the members present at the Joint Session—in other words, for what is technically known as a simple majority. Again I speak with great respect; but there does not seem to me to be any reason why, having regard to the conditions of India, we should insist upon an absolute majority. It may be at times very difficult for us to be guided by an absolute majority, and it may give rise to a great deal of misconception in the public mind. Therefore, the simpler course, if a Joint Session of the two Houses takes place, is for us to rely upon the majority of the members of the two Houses taken together who may be present at that Joint Session; and I should certainly dispense with the necessity for a dissolution before the Joint Session is called for.

Chairman: May I just see that I have got on my note what you have said. I think it is this:—"Except with regard to Money Bills, which should originate in the Lower House, any Bill in

either House. Deadlock: simple majority of Joint Session. Governor-General to convene immediately." That is right, is it not?

Sir Tej Bahadur Sapru: Those are my points. Now, My Lord, you will find that, in certain constitutions, an attempt has been made to define a Money Bill, and I will appeal to Your Lordship's experience that it is not always very easy to define what a Money Bill is.

Chairman: No.

Sir Tej Bahadur Sapru: It is extremely difficult at times to say when a Bill is a Money Bill and when it ceases to be a Money Bill; but, if you have equal powers, and if you give the Governor-General all the necessary authority and power to call a Joint Session, it does not seem to me to be necessary to make a special provision in our constitution for the definition of a Money Bill, or to provide a special machinery for deciding when a Bill is a Money Bill.

In this connexion, I would refer to the attempt that has been made—and I understand successfully—in Ireland, to define what a Money Bill is and also to provide a special machinery for the settlement of that. I will read Article 35 of the Irish Constitution:—

> "Dáil Eireann shall in relation to the subject matter of Money Bills as hereinafter defined have legislative authority exclusive of Seanad Eireann.
>
> "A Money Bill means a Bill which contains only provisions dealing with all or any of the following subjects—namely, the imposition, repeal, remission, alteration or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on public monies or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; subordinate matters incidental to those subjects or any of them. In this definition the expressions 'taxation,' 'public money' and 'loan' respectively do not include any taxation, money or loan raised by local authorities or bodies for local purposes."

Well, to a very great extent this definition follows the definition of a Money Bill in England and also the recommendation of the Bryce Committee.

Then, as regards the machinery, I would particularly invite the attention of the Committee to the provision in the Irish Constitution:—

> "The Chairman of Dáil Eireann shall certify any Bill which in his opinion is a Money Bill to be a Money Bill, but, if within three days after a Bill has been passed by Dáil Eireann two-fifths of the members of either House by

notice in writing addressed to the Chairman of the House of which they are members so require, the question whether the Bill is or is not a Money Bill shall be referred to a Committee of Privileges consisting of three members elected by each House with a Chairman, who shall be the senior judge of the Supreme Court able and willing to act, and who, in the case of an equality of votes, but not otherwise, shall be entitled to vote. The decision of the Committee on the question shall be final and conclusive."

Now, assuming that it becomes necessary for you to have some special provision for a Money Bill and a special clause defining a Money Bill, I would commend to this Committee the Irish model for its acceptance. The advantage that I see in it is this: In the first place, to keep the Governor-General out of party controversy; in the second place, to keep also the Speaker of the House, who should be above party politics so long as he is occupying that position, out of party controversy. You bring in a small Committee, consisting of an equal number of representatives of the two Houses, and you also bring in a trained lawyer, a Judge of the Supreme Court, to advise and guide them. That to my mind is the advantage of this system.

I hope some day or other Your Lordship will take up the question of the Supreme Court, because I have an uncomfortable feeling in my mind, and it is this—that last year that subject was crowded out of the agenda, and probably it has receded into the back-ground by now. But I do very strongly feel that it is no use talking of a Federal Constitution in India unless you constantly bear in mind the necessity of having a Supreme Court which will help us in solving many difficulties which may arise, either in regard to the Legislature or in regard to other matters. Therefore, I say, the procedure prescribed by the Irish Constitution seems to me to be certainly preferable to the procedure prescribed in certain other constitutions, which vest that power either in the Governor-General or in the Speaker.

Chairman: Sir Tej, before you go on, I want to see that I follow you. As we go along I think we shall find we get a very large measure of agreement, and it is my ambition to get you all, with ourselves, into an agreement. Up till now, I do not think there is very much difference between your position and that of Sir Muhammad Shafi. You see, what you have said is this: "Both Chambers equal."

Sir Tej Bahadur Sapru: Yes.

Chairman: That is what he also has said. "Except with regard to Money Bills." That is what he has said. "Money Bills in the Lower House." That is what he has said. Now, what about putting that clause in the constitution? He said he would like to put it in. Would you like to see it in too?

Sir Tej Bahadur Sapru: I should like that to be done.

Chairman: Very well; then that is agreed.

Chairman: "Deadlock: simple majority of Joint Session." That you have agreed to, Sir Muhammad?

Sir Muhammad Shafi: Yes.

Chairman: Then, with regard to what is a Money Bill, you say:—

"machinery for deciding like the Irish model."

I just want to ask you one further question. Just trace a history of a Money Bill, will you? Supposing a Money Bill comes before the Lower House and it is passed by the Lower House, what happens to it then?

Sir Tej Bahadur Sapru: What I say is that Money Bills must originate in the Lower House, but they must be passed by both Houses. In regard to that matter I am in complete agreement with Sir Muhammad Shafi; and you will find in other constitutions also that no distinction is made between one House and the other so far as the passing of the Bill is concerned, except, of course, in the German Constitution, and in constitutions similar to the German Constitution, where there is a provision for a referendum, which we do not contemplate in India. Those constitutions are different owing to the fact that they provide for a referendum.

Chairman: There is one other question which I am asked to put to you. Can it be amended in the Upper House?

Sir Tej Bahadur Sapru: I am going to deal with that immediately. I am also in agreement with Sir Muhammad Shafi, that so far as the question of the Vote of Supply is concerned, that must remain within the sphere of the Lower House.

With regard to the question of amendment, you will find that the power of amendment is enjoyed by certain Senates. For instance, the Senate of the United States and the French Senate have that power. What I would say in that connection is that I think we might follow in that respect the model of Australia and South Africa and give the Upper House the power to make suggestions and to make references to the Lower House. We might adopt the machinery that has been adopted either in Australia or in South Africa for settling differences that arise as a result of a deadlock between the two Houses when the Lower House refuses to accept any suggestion or reference back which the Upper House may have made. It should not be left to the Upper House to make an amendment of a certain Bill which has been particularly introduced by the Government of the day, the Government having adopted that Bill in view of the totality of circumstances which are present to its mind. I would not, therefore, give the power of amendment to the Upper House, but I would certainly vest it with the power to make suggestions to the Lower House.

I was going to deal with the question of the Joint Session. It has been suggested in certain quarters that, so far as joint sittings

are concerned, the power to call for them must rest with the Governor-General. I would venture to make a slight amendment to the suggestion made by Sir Muhammad Shafi in that respect. I would say that the power of deciding to call for a Joint Session should vest in the Government of the day. The Joint Session will be called technically by the Governor-General, but the advisers of the Governor-General—the Government of the day—must also have a voice, and indeed a decisive voice, in a matter of that character.

Dr. Ambedkar: There is one question I should like to put, if I may interpose at this point. Sir Tej said that, in the matter of Supply or Money Bills in general, the Upper House should have the right to make suggestions and references to the Lower House; but what happens if the Lower House does not accept the suggestions made?

Sir Tej Bahadur Sapru: Then the Upper House is free to reject the Bill, but if a deadlock thus arises you can follow the South African precedent and adopt their procedure.

Dr. Ambedkar: How can a deadlock arise if the Upper House has power only to make references or suggestions?

Sir Tej Bahadur Sapru: It may reject the Bill completely.

Sir Muhammad Shafi: Then what is the substantial difference between an amendment which is referred back to the Lower House and a suggestion to the Lower House which is backed by power to reject? What is the substantial difference between the two? The final decision is to be by Joint Session of the two Houses.

Sir Tej Bahadur Sapru: In the first place, it is more consistent with modern practice.

Dr. Ambedkar: According to your suggestion there would be no vital difference between Money Bills and others except this, that with regard to a Money Bill the Lower House alone would have the right of initiation. In all other matters the two Houses would be equal?

Sir Tej Bahadur Sapru: That, in effect, is what I have said.

Sir Maneckjee Dadabhoy: It is practically taking away the power of amendment or suggestion which you propose to give to the Upper House.

Sir Tej Bahadur Sapru: I would give the amplest possible power of making suggestions to the Upper House, but I should not allow the Upper House of its own authority to make amendments. The Lower House must have a chance to consider any suggestions.

Sir Muhammad Shafi: But the amendments made will go down to the Lower House.

Sir Tej Bahadur Sapru: Then that is technically not an amendment but a reference back. When you talk of an amendment you mean an amendment made by the Upper House in virtue of the power vested in it; whereas, according to me, the Upper House

makes a reference back and gives the Lower House a chance to consider it and to decide whether to agree with it or not.

Sir Maneckjee Dadabhoy: So far as Money Bills are concerned, the Upper House will be simply an advisory body?

Sir Tej Bahadur Sapru: It may reject.

Sir Maneckjee Dadabhoy: What is the ultimate effect?

Sir Tej Bahadur Sapru: A joint sitting; there is no getting out of it.

Sir Muhammad Shafi: Substantially your view and my view are the same, but there is a difference of phraseology.

Several Members: Not even that.

Sir Tej Bahadur Sapru: Except this, that you would at once give the power of amendment to the Upper House, whereas I give it the power of reference to the Lower House, the Lower House having an opportunity to consider the suggestions made.

Sir Muhammad Shafi: I would refer their amendments to the Lower House.

Sir Tej Bahadur Sapru: If that is what you would call an amendment we are in agreement, but I should not call that an amendment.

Mr. Iyengar: Do you mean, when you speak of making suggestions for the consideration of the Lower House, that the procedure will be more informal and will enable these people to confer and to adjust differences more easily than if the suggestion were formally incorporated in the Statute and sent down for reconsideration, so that all the irritation caused by the latter procedure will be avoided?

Sir Tej Bahadur Sapru: That is exactly the reason why the formal procedure of amendment has been abandoned in the Dominions in favour of reference back.

Mr. Jinnah: By this suggestion of yours you would put the Lower House in the position of at least believing that they are the supreme authority in financial matters. Instead of the other House deliberating and passing an amendment formally and then sending it down, you wish technically to keep the power of the Lower House with regard to Money Bills?

Sir Tej Bahadur Sapru: That is my point.

Mr. Jinnah: Only you say that any reference or suggestion may be made by the Upper House as advice.

Sir Tej Bahadur Sapru: Yes.

Mr. Joshi: Before rejection?

Sir Tej Bahadur Sapru: Yes.

Mr. Jinnah: If the advice or reference back is considered by the Lower House, and the Lower House is still of its former opinion and sends the Bill back as originally passed, then it will be open to the Upper House to reject it. What happens then?

Sir Tej Bahadur Sapru: Then comes the Joint Session. That is my suggestion. It is the same practice as exists in Australia and South Africa, with this difference—that in Australia you require dissolution and in South Africa you do not.

Mr. Jinnah: If I may interpose just once more, there is one further point I should like to raise. I did not follow what you said, Sir Tej, about the Irish Constitution. You read a clause from the Irish Constitution. Was that on the supposition that, if the suggestion that Money Bills must be originally introduced in the Lower House is not accepted, then you suggest that alternative, or what?

Sir Tej Bahadur Sapru: I am afraid I do not follow the question.

Mr. Jinnah: You read a clause from the Irish Constitution which defines what is a Money Bill, and sets up machinery for the determination of a Money Bill. Am I to understand that is for the purpose of leaving it open to either House to introduce a Money Bill?

Sir Tej Bahadur Sapru: No. Under the Irish Constitution the Bill originates only in the Lower House.

Mr. Jinnah: Then what is the object of defining it?

Sir Tej Bahadur Sapru: The issue may be raised of whether a Bill is a Money Bill, and in that case the procedure to be followed is laid down—the appointment of a special committee and so on.

Mr. Jinnah: If the Irish Constitution, as you suggest, lays down that every Money Bill must be introduced in the Lower House . . . . .

Sir Tej Bahadur Sapru: But the question may arise, what is a Money Bill?

Mr. Jinnah: You mean, somebody may suggest.

Sir Tej Bahadur Sapru: Yes, somebody may suggest that it is a Money Bill; and this provision is introduced into the various constitutions to answer the question, what is a Money Bill?

Mr. Iyengar: Somebody may introduce in the Upper House a Money Bill in disguise?

Sir Tej Bahadur Sapru: Yes.

Mr. Jinnah: That is really to prevent anybody introducing a Bill which is a Money Bill in the Upper House.

Sir Tej Bahadur Sapru: To safeguard the principle that Money Bills must originate in the Lower House. It is only with regard to that object.

Mr. Jinnah: Now, My Lord, Sir Muhammad Shafi made the suggestion—I will resume the thread of my argument, if I may—that the power of calling a Joint Session should vest in the Governor-General. Well, I personally think that technically the power should belong to the Governor-General; but I should *not exclude*

the Government of the day from exercising a potent voice in that matter. I think the position of the Governor-General under the constitution that we are contemplating will be one of extreme difficulty, because the Governor-General must have somebody or other to fall back upon as his adviser—you will be making the position of the Governor-General extremely difficult if, without the aid or advantage of some advice, he has to decide himself whether there should be a Joint Session or not.

Sir Muhammad Shafi: May I point out to Sir Tej Bahadur Sapru that my proposal is that, in cases of difference of opinion as contemplated by the question, the matter shall be referred to a Joint Session. There is no option left to anybody. The Governor-General will have to call a Joint Session.

Sir Tej Bahadur Sapru: No; pardon me, I do not agree with that opinion. There may be certain Bills which it appears right and proper to allow to lapse. There may be other Bills which it may be necessary to refer to a Joint Session. Now, I would leave it to the Government of the day to decide whether they should allow a Bill to lapse absolutely, or whether they think the Bill is of such importance that it must go before a Joint Session. Now, I would leave it to the Government of the day to advise the Governor-General that, in their opinion, a particular Bill must go before the Joint Session of the two Houses.

Sir Muhammad Shafi: Then there is a clear difference of opinion between you and me on that point.

Sir Tej Bahadur Sapru: On that point, yes.

Mr. Jinnah: I do not see the difference. What you mean is this, that supposing the Government say, " Well we do not wish to carry on this controversy. ."

Sir Tej Bahadur Sapru: We drop it.

Mr. Jinnah: Yes, quite so. But if the Government of the day supported the Lower House, it would say, " Now, here is a conflict; we do not want to continue this controversy; " in other words, " we do not want to go on with the Bill "—then they may communicate with the Governor-General and say, " we do not wish to proceed with this Bill any further."

Sir Tej Bahadur Sapru: No; Sir Muhammad Shafi's view is that, in every case of difference, the Governor-General shall be bound to call a Joint Session. He gives no discretion to the Governor-General.

Mr. Jinnah: Would it not be best that the power shall be given to the Governor-General that he shall call the Joint Session? That is the power given to him—that he *shall;* but if it is communicated to the Governor-General by the Government of the day that, so far as the Lower House is concerned, they do not wish to carry on the controversy. . . . . .

Sir Tej Bahadur Sapru: Therefore the proper legal expression, Mr. Jinnah, will be that the Governor-General *may* call, not that he *shall* call.

Mr. Jinnah: Quite so. Well now, cannot you meet that? That is merely a question of phraseology, is it not? Supposing the Government of the day does not wish to carry on the controversy?

Sir Tej Bahadur Sapru: Then it must drop.

Mr. Jayakar: I understood the point raised by Sir Muhammad Shafi was that in every case the Governor-General, whether it is the Governor-General alone or the Governor-General acting with the advice of the Government of the day, must call a Joint Session.

Sir Tej Bahadur Sapru: Yes; and that must involve a tremendous waste of time.

Mr. Jinnah: Yes, but supposing one of the parties to the controversy says, " I do not want to go on with the controversy "?

Sir Tej Bahadur Sapru: But then, why say that the Governor-General *shall*? If you do that, he will have no option.

Mr. Jinnah: You can provide for that by saying, " the Governor-General *shall* call a Joint Session *unless.*"

Sir Tej Bahadur Sapru: I quite agree. Then it comes to the same thing as my suggestion.

Mr. Zafrullah Khan: Might I suggest that it might be desirble to frame it in this way—that the Governor-General shall call a Joint Session unless, in the case of a Government Bill, the the Government, and, in the case of a non-Government Bill, the Member-in-charge, does not wish to proceed with the controversy.

Sir Tej Bahadur Sapru: I have no difficulty about that if the Governor-General has a discretion; but according to Sir Muhammad Shafi's suggestion he would be given no discretion at all.

Mr. Jinnah: As you put it first, Sir Tej, you see, it sounded differently. As you put it first, it takes away the power from the Governor-General altogether unless the Government of the day advises him.

Sir Tej Bahadur Sapru: That is not what I meant, Mr. Jinnah. What I really meant to say was that, while I would give that power to the Governor-General, I would also give a potent voice—this is the phrase that I used—to the Government of the day, so that, if the Government of the day decided not to go on with a certain Bill, then there would be no occasion for the Governor-General to call a Joint Session; but, if the Government of the day said it must be referred to a Joint Session, then the Governor-General would have to call a Joint Session.

Sir Muhammad Shafi: I am prepared to accept Mr. Zafrullah Khan's suggestion, and to modify my original view to that extent.

Chairman: Is it really this, then—the Governor-General, in the case of a deadlock, to convene the Joint Session immediately unless the Government object. Is that right?

Mr. Jinnah: Unless the Government . . . . . .

Sir Tej Bahadur Sapru: Or the Member-in-Charge of the Bill.

Mr. Jinnah: . . . . . or the Member-in-charge of the Bill does not wish to proceed with the Bill any further.

Sir Tej Bahadur Sapru: Say the Government, not the Member-in-charge.

Chairman: I understand quite enough now.

Sir Tej Bahadur Sapru: So much with regard to the power of the Governor-General.

Now, in the questions which Your Lordship has framed—if I may respectfully point it out—there is no question bearing on any power of amendment of the constitution; and I should like to have Your Lordship's guidance in regard to that matter—as to whether that power should be dealt with separately or as to whether you think that there should be no power of amendment of the constitution in the Legislature.

Chairman: Well, as a matter of fact I have drawn up a great number of the questions that I want you to be good enough to discuss. This particular question is not under this Head at all. In my Heads there are 1, 2, 3 and another head, and I have got a Head under "Constituent Powers;" and it is under the Head of "Constituent Powers" that I shall ask you to be good enough to discuss that question.

Sir Tej Bahadur Sapru: I shall defer dealing with that question then, until it comes up under that Head.

My Lord, I have practically dealt with all the points covered by Your Lordship's questions. I will now take up each one of these questions and answer them categorically. I will take up each one of the questions under Head 3. The first question is:—

> "Is the constitution to provide that normally, though subject no doubt to any requirements to the contrary necessitated by Safeguards, the governing principle with regard to legislation is to be that the assent of both Chambers is required to the enactment of a Bill?"

My answer is in the affirmative.

> "(ii) If so, which of the two following possible alternatives shall be taken as the basis of the relationship between the two Chambers:—(*a*) that the powers and functions of both Chambers shall be approximately equal."

I say "yes" except in regard to Money Bills.

> "(*b*) that the decisions of one Chamber shall prevail over those of the other . . . . . ."

That does not really arise in the view that I have presented before the Committee.

> "(iii) If the deciding voice is to be vested *by the constitution* in one Chamber, in which of the two Chambers is it to be vested, and on what principles is the decision so to provide determined, having regard to the composition and method of election of each?"

I submit that that question too does not arise in view of the discussion which has already taken place.

> " (iv) If it is to be decided that the governing principle is to be equality of powers, shall the constitution provide—(*a*) that all Bills, including Money Bills, can be introduced in, and amended by, either Chamber."

I will make the suggestion that all Bills may be introduced in either Chamber.

Sir Muhammad Shafi: Except Money Bills?

Sir Tej Bahadur Sapru: Excluding Money Bills.

Sir Muhammad Shafi: Instead of the word " excluding " you have " including " here; that is all.

Sir Tej Bahadur Sapru: Yes.

> " (*b*) that the function of voting Supply shall be shared by both Chambers."

I do not agree with that; I say that the function of voting Supply shall be by the Lower House.

> " presumably sitting in Joint Session."

I do not agree.

> " since independent amendment of Demands for Grants by each Chamber would be likely to lead to complications and confusion; (*c*) that differences between the two Chambers, which prove incapable of reconciliation by the ordinary methods of " reference back ' should be finally resolved (subject to any necessary provisions connected with Safeguards) by a majority vote of the Members present and voting at a Joint Session."

I agree with that.

> " (*d*) that a Joint Session shall be composed—(i) of all the Members of both Chambers, or (ii) of an equal number of representatives of each? "

Upon this point I would like to say a few words. I personally think that the Joint Session should be a session of all the Members of the two Houses. To have a small Committee, consisting of an equal number of members from the two Houses, would be really to erect a third Chamber, which is more or less the condition made by the Bryce Committee, and it did not find any favour here in constitutional circles. Besides, it would sometimes be difficult to secure an open mind from a Committee consisting of five men of one House and five men of the other House, whereas it seems to me that there would be plenty of room for conversion of opinion where you had the two Houses in their full strength sitting together.

> " (v) Shall the decision whether or not to summon a Joint Session in any given case rest with the Governor-General; and, consequently, shall it be a matter for the Government's

discretion in each case to determine—(*a*) whether resort should be had to Joint Session to resolve a difference."

My answer is that technically the decision shall rest with the Governor-General, but the Government's discretion may come in to determine whether resort should be had to a Joint Session to resolve the difference or not.

Sir Muhammad Shafi: In the case of Government Bills.

Sir Tej Bahadur Sapru: I am talking of the case of Government Bills.

> " or (*b*), whether the ordinary principle indicated under Point (1) of this Head should be allowed to operate, with the consequence that the Bill in dispute would lapse?"

That does not arise in the view that I have taken. The last question is:—

> " (vi) Shall provision be made for the elapse normally of an interval before the calling of a Joint Session? If such provision were made as the general rule, shall special provision be made for the possibility in suitable cases of decision by Joint Session forthwith, *e.g.*, in the case of the Annual Finance Bill, or in other cases of emergency."

I have already anticipated my answer to this question by saying that we must follow the simpler and the more feasible model of the South African Constitution in preference to the Australian Constitution. That is all that I have to say.

Mr. Zafrullah Khan: Lord Chancellor, I intend to make a submission only with regard to certain matters arising under sub-head (iv) of Head 3, which is at present under discussion. It relates to the question of the powers of the two Houses in regard to certain Bills, and the procedure to be adopted in the case of a difference of opinion which cannot be resolved by ordinary methods. My submission—in view of what you have said as to the opportunity which will be afforded to the Committee of discussing the constituent elements of the constitution—will be briefer than it otherwise would have been. Not knowing whether we were to discuss it under a separate Head, I had made a note under (*a*). As it includes all Bills, I thought that perhaps the question of Constitutional Bills would also arise. I will omit that submission to-day and, if the necessity arises, I will make my submission under the Head which you have outlined.

With regard to the Joint Session which has been outlined under (*c*) of sub-head (iv) I am afraid that I have to differ from Sir Tej Bahadur Sapru with regard to one matter. This is a matter with regard to which so far as I was able to follow Sir Muhammad Shafi, he made no specific submission. I am referring to the question as to whether a matter which is referred to a Joint Session shall be decided by a simple majority of votes of the Members present, or as to whether any other provision should be made. Sir Tej Baha-

dur Sapru said a simple majority of the Members present should suffice. I have to put forward a different suggestion. We have all agreed that the two Chambers of the Federal Legislature shall have approximately equal powers. So far as the submissions so far made are concerned, Sir Tej Bahadur Sapru and Sir Muhammad Shafi both agree that the two Chambers shall have approximately equal powers. Sir Tej Bahadur Sapru has also visualised an Upper Chamber which shall be a vital and living Chamber, and not a copy of the present Council of State. He says that we shall have a Chamber which will perform the functions which it is expected to perform. Paragraph 26 of the second Report of the Federal Structure sub-Committee (on page 21) also visualises the Upper Chamber as a body of weight, experience, and character. But paragraph 26 also tentatively suggests that the strength of the Upper Chamber would be much smaller than the strength of the Lower Chamber. Having that in view—in case the total strength of the Lower Chamber is likely to be almost double that of the Upper Chamber—my submission would be that if, in case of a difference, a decision is to be arrived at in the Joint Session by a simple majority of the Members present, you are not giving equality of powers to this Chamber, which is to be vital and living and a body of weight, experience and character. That makes all the difference. If the strength of both Chambers were equal and all the Members of both Chambers participated in a Joint Session, I would then agree that, in case of a difference of opinion, it should be decided by a simple majority.

(*Lord Sankey left the Chair, which was taken by Sir Samuel Hoare.*)

Mr. Zafrullah Khan: I would in that case agree that a difference of opinion may be resolved in a Joint Session by either a vote of an absolute majority of the total number of the Members of the two Chambers, or even perhaps by a simple majority of those present. But I submit, with great respect to Sir Tej Bahadur Sapru, that the relative strength of the two Chambers makes a great deal of difference as to whether you will require a simple majority or an absolute majority, or even a higher figure, in case of a difference of opinion. A difference of opinion would arise only in case a majority of the one House is of one opinion and a majority of another House is of another opinion. It may be—except in the case of Money Bills, of course—that the measure with regard to which the difference has arisen has originated either in the Lower House or in the Upper House. The difference may have arisen either because the Upper House will not accept the measure as passed by the Lower House, or because the Lower House will not accept the measure proposed by the Upper House, or an amendment has not been agreed to by both Houses. Having this in view—in case eventually this Committee arrives at the conclusion that the relative strengths of the two Chambers should be as is outlined in the Report of the Federal Structure sub-Committee, that is to say the

strength of the Upper Chamber about half the strength of the Lower Chamber, and in case that is the position maintained actually in the Statute—my view is that a higher percentage should be required for a decision of the Joint Session to resolve differences. And I would submit that, in that case, a majority either of two-thirds of the Members present, or of three-fifths of the total strength of both Houses, should be insisted upon. In the case of a majority of three-fifths of the total number of Members, if you have 150 Members in the Upper House and say 300 in the Lower House, you would require the support of 270 Members in favour of the measure before the measure would pass, and that is nine-tenths of the Lower House. It will be observed that, in case there is a serious difference of opinion between the Lower House and the Upper House, if the Lower House can win support for the measure to the extent of 90 per cent. of its own members and induce them to be present—because I have said that in the case of a three-fifths majority it should be a majority of the total—the Lower House would still carry the measure in the teeth of the opposition of a united Upper House. But, in that case, it would require a very large majority of its own Members in order to carry the measure.

My submission, therefore, is that, having regard to the proposed strength—though I do not know whether that relative strength will be maintained—it is only consistent with the views expressed so far that the majority required should not be a simple majority or even an absolute majority of the total number of Members of both Houses, but a higher majority than that.

Dr. Ambedkar: Would Mr. Zafrullah Khan permit either Chamber sitting separately to decide upon measures by a simple majority or would he require an actual majority of the Members in that case?

Mr. Zafrullah Khan: A simple majority.

Dr. Ambedkar: Then I do not see why they should not decide questions by simple majority when they are sitting together.

Sir Muhammad Shafi: Because there is a difference of opinion between the two Houses.

Mr. Zafrullah Khan: Very often Members are not able to see the points of view of other Members; but one reason will be that the character of the two Houses will be different.

Sir Tej Bahadur Sapru: May I ask Mr. Zafrullah Khan to tell us whether he knows of any parallel of an absolute majority being required as high as two-thirds or three-fifths. It is a question of policy whether you have two-thirds or three-fifths.

Mr. Zafrullah Khan: I understand the question to be whether an absolute majority has ever been interpreted in that way.

Sir Tej Bahadur Sapru: As coming anywhere near two-thirds or three-fifths.

Mr. Zafrullah Khan: I have never said that; but if the question is whether any constitution insists upon a majority of three-

fifths before a measure can become law, I could refer Sir Tej Bahadur Sapru to several provisions in the new constitutions of the smaller States of Europe which have been formed since the War, with regard to several matters, more particularly in regard to constitutional amendments.

Sir Tej Bahadur Sapru: Constitutional amendments are different.

Mr. Zafrullah Khan: I am giving you an instance more particularly with regard to amendments of the constitution. Also with regard to other matters, in cases of difference of opinion, various percentages are laid down for the different Houses, *e.g.*, as to referendum or in regard to Joint Sessions that may have to be held. There are instances where such a majority is insisted upon. In any case, as has so frequently been observed in this Committee, we must have regard to the peculiar conditions in India and also, as I have said, to the relative strength of the Chambers. Merely because the Committee thinks that we shall have a more effective Upper Chamber if we keep its numbers within a certain limit, it should not follow that thereby the powers of the Upper Chamber should be reduced. Supposing we came to the conclusion that the relative strengths of the two Chambers should be the same, then Sir Tej Bahadur Sapru will appreciate that the question would assume an entirely different complexion immediately, and the Upper Chamber would have far more power in a Joint Session as a result of that than it would otherwise get. Therefore, my submission is that, merely because for certain consideration it may be necessary to keep the strength of the Upper Chamber at about one-half that of the Lower Chamber, it should not follow that its powers should be proportionately cut down, and that it should not carry as much weight in a Joint Session as it would have done if its numbers had been greater.

Sir Muhammad Shafi: In other words, what you say is this, with regard to the question put to you by Dr. Ambedkar—that in one case it is a difference of opinion between individuals, while, in the other case, it is a difference of opinion between the two Houses of Legislature. Therefore the two cases stand on an entirely different footing.

Mr. Zafrullah Khan: With regard to Dr. Ambedkar's question, I was in the course of explaining that the difference here is that the two Houses possess different characters. It has been desired throughout to constitute an Upper House which should not be a mere duplicate or a copy or a reflection or a mirror of the Lower House. If that is so, then we agree in principle, the moment we agree to the constitution of an Upper House, that the Upper House will be a House of a different character from the Lower House; and that it would make for the strength and stability of the constitution that is should be insisted upon that no measure shall become law unless it is assented to by both Houses. Therefore we have agreed, and we consider that it will be for the good of the working

of the constitution, that both Houses should assent when each is considering a measure separately. If we obtained that assent by simple majorities in each House, then we would have the certainty that the measure in question had the approval of the majority in each House, be it only a simple majority of those present, those Houses having those two different characters—one being the more popular House elected directly by the voters, and the other being the truly Federal House representing the Legislatures of the British Provinces and the administrations of the States.

With regard to the question of a Joint Session's being obligatory on the Governor-General, I had originally agreed to the view expressed by Sir Muhammad Shafi; but, as has been pointed out, it is necessary that, in the case of a Government measure, the choice should be left to the Government—where a difference of opinion has arisen between the two Houses—whether they will or will not proceed with the measure. The government should be at liberty, after gauging what support they are likely to receive in each Chamber, to decide whether they are or are not likely to carry the measure in a Joint Session in a form in which they think it will be useful. If they think they will not be able to carry it at all, or that it will be so whittled down as to be no longer, in their opinion, a useful or effective measure, the choice should be left to them to withdraw it. In that case there will be no deadlock to resolve, and it will not be necessary to call a Joint Session.

In the case of a private measure—a measure sponsored by a private Member—if such a position arose it would be left to the Member-in-charge to exercise his ordinary option of withdrawing it if he so desired, and thus there would be no deadlock to resolve. This situation, however, is much less likely to arise in the case of private Bills. On this point I think there need now be no difference of opinion.

Sir Sultan Ahmed: If both Houses are in Joint Session and (to take a hypothetical case) the Lower House has 300 Members and the Upper House 150, then the total number in the Joint Session will be 450. If the matter about which there is controversy is discussed in the Joint Session and 226 Members vote for the measure, why should not it be carried into law? What is the necessity of insisting on 270?

Mr. Zafrulloh Khan: One part of the reply I have already submitted in replying to Dr. Ambedkar. 225 would be 75 per cent. of the Lower House. This provision would be equal to a provision which said that if a measure had the support of 75 per cent. of the Members of the Lower House, then the Upper House could be ignored altogether and the measure carried over its head. That would be the practical result of such a provision; and therefore it is necessary, in my view to require a higher majority.

Sir Sultan Ahmed: I simply suggest that, in the case of a new House of 450 Members, the vote of a simple majority—that is, 226—should carry the day. We do not know who are going to vote for the measure and who will vote against it.

Mr. Zafrullah Khan: Naturally, I cannot hope merely by my answers to persuade all my friends to agree with me the moment I make a reply; but I am mentioning considerations which, to my mind, seem to require a higher majority. One consideration is that we on this side have agreed and do agree with (iv) (*d*) (i)—namely, that a Joint Session shall be composed of all the Members of both Chambers. That being so, and the relative strength of each Chamber in a Joint Session being what I have outlined, that is an additional reason for having a larger majority. Though everyone must have the right to come in and try to persuade his colleagues to vote one way or the other, the Chambers should be given approximately equal power in the case of a Joint Session.

I have only one word to add. If the membership of both Chambers were equal, or if we agreed to (iv) (*d*) (ii) and had an equal number of representatives of each House in a Joint Session, then my submission would lose its point. My submission is based on the assumption that the relative strength of the two Houses would be different and that all the Members of each House would take part in the Joint Session.

Sir Muhammad Shafi: Assuming all the 225 Members, in the case mentioned by Sir Sultan Ahmed, were Members of the Lower House, and the others were all Members of the Upper House, what would my friend Sir Sultan Ahmed say?

Chairman: I think, Sir Sultan, you will have to make your reply later.

Sir Provash Chunder Mitter: Before I deal with the different sub-heads specifically, I should like to place before the Committee certain arguments of a general nature. My friend, Sir Maneckjee Dadabhoy, from one point of view, and my friend, Sir Muhammad Shafi, from another point of view, have referred to the present Government of India Act, but there is one fundamental difference, and that fundamental difference is that under the present Government of India Act the responsibility is with the British Parliament. The constitution that we contemplate is a constitution where the responsibility will be in the Indian Legislature. If anything goes wrong under the present Act, the British Parliament has reserved to itself powers which it can exercise through its agents to protect the situation—powers of certification by the Governor-General, powers given to the Governor-General in Council, who is responsible to the British Parliament, and so on. When, however, the Indian Legislature assumes responsibility, it is necessary that the Indian Legislature should have sufficient powers to shape its policy, sufficient powers to prevent deadlocks and so on. Therefore, in answering all the questions on these various subjects, that is the general aspect which you should bear in mind. I have no doubt that the present Act is very important as a guide to what has taken place in the past; but whenever we refer to the present Act we should bear in mind that general observation, and I think Sir Muhammad Shafi did so when he referred to the present Act.

The next point to which I would draw attention is this—that, according to the Report of the Federal Structure sub-Committee at its last Session, a Ministry would be removable on a vote of no-confidence which was carried by a two-thirds majority. Perhaps those who suggested that did so because they felt how important it was that the constitution should run smoothly and afford a large measure of stability. We are not discussing the merits of the question whether there should be a two-thirds majority or not, but there is one question which concerns us now which has a bearing on that. If we make the Lower House the determining House for dealing with Money Bills, or even for passing the annual Budget, then the gap between the two-thirds majority of both Houses and a bare majority in the Lower House will be wider. If we ultimately leave the decision to a Joint Session, then, assuming there will be 300 Members in the Lower House and 150 in the Upper, giving 450 Members for the Joint Session, a two-thirds majority will largely synchronise with possibilities of a vote of no-confidence. On the other hand, if you leave it to a bare majority of the Lower House, then 151 Members can throw out a Money Bill, the passing of which may be essential. 151 Members can throw out an essential piece of legislation and 151 Members can throw out the Budget. In both cases, the Ministry may remain in office, but they may be unable to pass an essential measure or get necessary supplies. Therefore in deciding what power should be given, the kind of constitution at which we are aiming should be taken into consideration.

Then, Sir, we must also take into consideration the elements of the Federation. No doubt the constitutions of other countries are very useful; but, at our last Session, Sir Tej Bahadur Sapru and others emphasized that, while taking into account the constitutions of other countries, we must also take into consideration the realities of the situation in India. We are going to federate with the Indian States. In the Indian States—we discussed the question fully last week—there is for the moment no elective system in the sense that we have it in British India. Some of the States may have advisory Legislative Councils. Now, as we are going to federate with the Indian States, and as the position of the Indian States is unique as compared with other federal constitutions known to us, that is an aspect which we must now ignore if, by federating with the Indian States, we hope to improve the status of the country and to establish a happier and a better India. Therefore, in stressing the point about the power of the Lower House we should bear that in mind.

There is another important point which should always be borne in mind—that the constitution should be run smoothly. If we want to run the constitution smoothly, the less the possibilities of acerbity—the less the possibilities of difference between the two Houses—the better.

Those, Sir, are the general observations that I have to make with regard to these questions; but another point was raised in the discussion—namely, the need for the Upper House. On that point

Mahatma Gandhi was referred to. I find, however, from page 92 of the report that was circulated to us, that what the Mahatma said was this:—

> "I am certainly not enamoured of and do not swear by two Houses of legislature. I have no fear of a popular Legislature running away with itself and hastily passing some laws of which afterwards it will have to repent."

Then, lower down, after discussing the Upper Chamber:—

> "Anyway, whilst I would not take up a decisive attitude in connection with it, personally I am firmly of opinion that we can do with one Chamber. . . ."

Well, that, no doubt, is the opinion of a very important representative. On the other hand, Their Highnesses have agreed to federate on the basis of two Chambers. Therefore we need hardly discuss the question of an Upper Chamber unless we go back upon this idea of federation. It may be that some on this side would like the one Chamber; but many would like two Chambers. And, if we are going to federate, there must be give-and take—not all take; and give-and-take means both sides. But even on the British Indian side there is a very fair amount of opinion which is in favour of two Chambers.

Now I will try to answer the questions categorically. Question No. (i) is:—

> "Is the constitution to provide that normally, though subject no doubt to any requirements to the contrary necessitated by Safeguards, the governing principle with regard to legislation is to be that the assent of both Chambers is required to the enactment of a Bill?"

I am of opinion that the final decision should be in the Joint Session; and, as the final decision should be with the Joint Session, the intermediate process becomes less important than if it were with either House.

Mr. Zafrullah Khan: Will you require a Joint Session in every case?

Sir Provash Chunder Mitter: No. Supposing both Houses agreed, there would be no question of a Joint Session. If the two Houses do not agree, there will be Joint Sessions. There are other cases, to which I will refer as I go on answering these questions, where a Joint Session may become necessary.

Then the second subject is—

> "If so, which of the two following possible alternatives shall be taken as the basis of the relationship between the two Chambers:—(*a*)that the powers and functions of both Chambers shall be approximately equal;"

I am in favour of the powers and functions being equal.

Then (*b*)—

> "That the decisions of one Chamber shall prevail over those of the other—or possibly that in some matters, *e.g.*,

finance, the right of decision shall vest in one Chamber only."

As regards questions other than finance, as ultimately the decision will be the decision of a Joint Session, this question, in view of my answer, does not arise so far as I am concerned. As regards finance, I shall deal with it separately along with Money Bills.

Then the third sub-head is this:—

"If the deciding voice is to be vested *by the Constitution* in one Chamber, in which of the two chambers is it to be vested, and on what principles is the decision so to provide determined, having regard to the composition and method of election of each?"

As I am in favour of a Joint Session of both Chambers, the answer to this question is not necessary, so far as I am concerned.

Then (iv):—

"If it is to be decided that the governing principle is to be equality of powers, shall the constitution provide—(*a*) that all Bills, including Money Bills, can be introduced in, and amended by, either Chamber?"

As regards (*a*), I am of opinion that "either Chamber" is the best. No doubt, according to the constitutional practice in most countries, all Money Bills, and all finance matters arise in the First Chamber, and that is right; and not only is that right, but we should aim at that when the transition period is over. But there is another aspect which we should not ignore, and that is that we are federating with regard to subjects in which Their Highnesses also are intimately concerned. Their position in the Lower Chamber—unless those who are in favour of the predominant power in the Lower Chamber, from the very beginning are willing to give them a larger number of votes than some of them, I think, are willing to give them—may be a position of difficulty. Now, if we want to run the constitution smoothly there must be a real understanding between Indian India and British India, from that point of view, during the transitional period at any rate. I have no strong objection to Money Bills being initiated in either Chamber; but I have no objection, speaking for myself, in view of the future, to initiating Money Bills only in the Lower Chamber, because ultimately the decision will be the decision of the Joint Session. I thought it right, however, to place before you the other aspect of the question—not that I have any strong objection to the initiative being in the Lower Chamber. But if the strength of the two Houses be different from what has been suggested—namely, 300 and 150—or if the removal of the Ministry be on a different basis, then I might have an objection. But I am now proceeding on the basis that the recommendations of last year will stand. Then, lastly, on the communal question, too, it may have an important bearing. I do not want, however, to develop that question here; it is a matter more for the Minorities Committee. That is all I have to say on sub-head (iv) (*a*).

I turn now to (*b*):—

> " that the function of voting Supply shall be shared by both Chambers—presumably sitting in Joint Session, since independent amendment of Demands for Grants by each Chamber would be likely to lead to complications and confusion."

I have only to repeat the answer I have already given. I need say no more.

Then (*c*) is this:—

> " that differences between the two Chambers, which prove incapable of reconciliation by the ordinary methods of ' reference back,' should be finally resolved (subject to any necessary provisions connected with Safeguards) by a majority vote of the Members present and voting at a Joint Session."

My answer is in the affirmative so far as the Joint Session is concerned; and if the strength of the Houses is to be 300 and 150, then no question arises about the control of the Ministry. If, on the other hand, the strength of the Houses be changed, then we may have to re-discuss this matter.

Then (*d*) is:—

> " that a Joint Session shall be composed—(i) of all the Members of both Chambers, *or* (ii) of an equal number of representatives of each? "

I am unhesitatingly of opinion that it should consist of all Members of both Chambers. To place the matter with a Committee of both the Houses will take away much that is in favour of a Joint Session or of an Upper Chamber.

Then sub-head (v):—

> " Shall the decision whether or not to summon a Joint Session in any given case rest with the Governor-General; and, consequently, shall it be a matter for the Government's discretion in each case to determine—(*a*) whether resort should be had to Joint Session to resolve a difference, or (*b*) whether the ordinary principle indicated under Point (i) of this Head should be allowed to operate, with the consequence that the Bill in dispute would lapse? "

I am of opinion, Sir, that it should not be with the Governor-General; and my reason is this. We should aim at making the Governor-General a constitutional Governor-General, and we should not bring the Governor-General into controversies, even during the transitional period of our constitutional development, unless it is very necessary. From that point of view I would avoid the Governor-General if it be possible. As there will be a responsible Ministry I agree that it is a matter for the Ministry to decide. As regards private Members' Bills it is an unimportant point and I do not mind what you decide about them.

As regards what is a Money Bill, I am willing to accept the suggestion of Sir Tej Bahadur Sapru. In answer to certain questions, he has explained quite clearly the meaning of a Money Bill, and what should be done in case of difference of opinion.

Lastly:—

> " (vi) Shall provision be made for the elapse normally of an interval before the calling of a Joint Session? If such provision were made as the general rule, shall special provision be made for the possibility in suitable cases of decision by Joint Session forthwith, *e.g.*, in the case of the Annual Finance Bill, or in other cases of emergency? "

In the case of the Annual Finance Bill I think that there should be forthwith a Joint Session. In the case of other Bills, I think that, if a substantial minority—say two-fifths—want a Joint Session, there should be a Joint Session. What are the pros and cons? There may be some Bills where delay may affect the public. On the other hand, the reason for allowing some time to elapse is that the public get a chance of discussing the matter. As ultimately the decision will be the decision of the Joint Session, when it goes before the Joint Session—the Joint Session being of an Upper House which will represent the popular interest, and of a Lower House which also represents the popular interest—they can come to either of two conclusions. They may decide either upon a postponement for consulting the public, or they may decide to go on with the matter. If, in every case without any power being left to anybody, you allow some time to elapse, and send it to the next Session, or you take it up after a definite period of time, often an important measure will be delayed. On the other hand, if you leave it to a substantial minority to insist on a Joint Session, ultimately you leave it to the wisdom of the Joint Session. Therefore, I think that it is a better procedure. That is all that I have to say upon these various points.

Lord Lothian: As I understood, it was suggested that the Joint Session should take place immediately. I do not wish in any way to discuss the merits of the House of Lords, but one of the powers possessed by the House of Lords—and I think by the Second Chamber in almost every country in the world—is that of delay. One of the objections to having no delay is that it almost forces parties and governments to organise both Chambers on a party basis at the beginning of the Session, with a view to trying to establish an absolute majority in both Houses, so that the whole possibility of revision and delay cannot arise. It is a very important element, I think, in the consideration of the matter that it should not be purely automatic. It forces the party organisation of the two Houses so that the Government of the day can always ensure, if it holds a Joint Session, passing the legislation without any consideration at all. I would suggest that it is worth considering whether a delay of six months, or as the South African Constitution and many others provide, a delay of a Session, should be an element in this problem.

Sir Tej Bahadur Sapru: May I answer that? What I really intended was that I would not make it compulsory on the Governor-General (or whoever be the authority to call the Joint Session), to allow a certain time to elapse. It may be done; but, on the other hand, if it is very necessary in the public interest to call immediately a Joint Session, he should not be barred from that.

Lord Lothian: You would not allow the Second Chamber itself to have a voice as to whether there should be an immediate Joint Session or a delay of, say, six months? I think that the element of delay is a very important one in legislation.

Sir Tej Bahadur Sapru: I quite realise that.

Sir Maneckjee Dadabhoy: If I understand you rightly, you said that it should be one month in the case of a disagreement on a Money Bill and three months in ordinary cases.

Sir Tej Bahadur Sapru: I did not make that suggestion myself. I read only the section of the South African Constitution.

Sir Maneckjee Dadabhoy: Did not you endorse that view?

Sir Tej Bahadur Sapru: I endorsed the South African Constitution.

(*The Committee adjourned at 4-15 p.m.*)

PROCEEDINGS OF THE TWENTY-SEVENTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 22ND SEPTEMBER, 1931, AT 11-0 A.M.

HEAD 3.

Relations between the two Chambers of the Federal Legislature— (concluded).

Sir Akbar Hydari: Lord Chancellor, I must at the very outset say how deeply impressed we all were by the statement which Sir Samuel Hoare made yesterday morning in regard to the present financial crisis in Great Britain, and by the appeal he made to us, the Indian Delegates on this Conference, to co-operate in every possible way in meeting this crisis. Let me assure him that this appeal has not been made in vain, and that every one of us will co-operate to the fullest measure of our ability in doing what we can to tide over the difficult time which may face us in India also. Speaking for Hyderabad, it is well known in financial circles how Hyderabad has always co-operated, both in our investments and even quite recently in our large railway purchase transactions. This close co-operation, which has been of benefit to both parties, will continue.

Lord Chancellor, When I spoke under Head 2, I reserved the liberty, as on that occasion I was only passing in review the subjects which came under Head 2, to add to my remarks if the subsequent discussion should demand it. I found, however, so much with

which I could agree in substance in the speeches of my colleagues that there was no need for me to inflict myself on the Committee till we took up the discussion of Head 3. This Head, dealing as it does with the relations between the two Chambers (if there are to be two), follows logically Head 2, which dealt with the method whereby these Chambers should be elected. In considering this Head, and, in fact, all other questions that will come before us, there is vital need to keep what I may call the realities of the position always prominently before us. I think that the great majority of the speakers on the British Indian side, if I may venture to say so, did a great service to the Federal idea when they subscribed to the views which we on this side firmly hold, namely, the principle of non-interference. It was on this ground that I said nothing with regard to the question of the system of representation in British India, and the comparative methods of direct and indirect election. I do not, of course, mean that so far as the States are concerned, they resent advice, or that they want to be impervious to the trend of public opinion. I mean only that our partners in the Federation should leave us full freedom of decision. We desire to be neither reactionary nor unprogressive. We desire to have freedom to order our affairs in the manner best suited to the traditions of our people. Speeches like those of Dr. Ambedkar, if I may say so, do not sufficiently appreciate the realities of the situation.

Dr. Ambedkar: I have never been guilty of not appreciating realities.

Sir Akbar Hydari: As Mr. Gandhi and Pandit Malaviya (whose statesmanlike pronouncements, so far as the Indian States are concerned, I take this occasion cordially to acknowledge) have realised, federation means amicable and consenting co-operation of various units for the common good. It will not do for Dr. Ambedkar to say that, unless we of the States do so and so, he will not agree to our entering into the Federation. That is not the language of business. We must remember that federation is in the interests of British India as much as in the interests of the Indian States. I will give an instance. My relations are at present with the Crown, which is paramount over me. It is because of the paramountcy of the Crown that a portion of the G. I. P. Railway runs through my territory. If Dr. Ambedkar left me out of the Federation he would not be able to travel from Bombay to Madras unless I gave him permission, for which he would have to plead with me, to let his railway run through my territory, in the same way as I allow the Crown at present to run the G. I. P. Railway between Raichur and Waddi. Again, coming as he does, as I understand, from Baroda, he could not correspond with anyone in Bombay unless postal communication was arranged between the two places, either through the paramountcy of the Crown, or by mutual agreement between His Highness The Gaekwar and the Government of Bombay. It is for this reason that most Indian States have freedom of mails as a definite article of treaty between them and the Crown.

The point, therefore, is that, for the administration of subjects which are of common concern to the States and British India, some sort of nexus is necessary. At present this nexus is the paramountcy of the Crown. In future, in those matters which are declared to be Federal, we hope that it will be the Federal Government, in which the Indian States will have their full share. Without it British India cannot administer subjects of all-Indian concern except through the Crown.

Speakers on the British Indian side, notably Mr. Gandhi and Pandit Malaviya, made a moving appeal to us on this side to introduce the principle of representation in our States. That our work should be solely directed to the welfare of our subjects, and should carry with it their co-operation in the fullest possible measure, are propositions which are axiomatic; but we are not sure whether the principle of election or the principle of selection, having regard to the circumstances in which we are placed, our traditions, and our history, will best achieve this end. In this connection I would invite your attention to what I said when I spoke last that we in Hyderabad are trying in our own way to see how each vocational interest, through its own proper representative, may be brought into intimate contact with Government, so that it may have an opportunity of expressing its views, and Government of expressing their policy to it. I am, therefore, particularly grateful to the distinguished leaders of Indian opinion who have spoken in favour of giving us time to work out our ideas on this subject on our own lines, and I hope they on their side will regard this assurance in the same friendly spirit as that in which it is given.

My view in regard to question (i) under Head 3 is, that the governing principle with regard to legislation should be that the assent of both Chambers is required to the enactment of a Bill. I share with Mr. Gandhi a preference for a unicameral Federal Legislature, and it was only in deference to what we on this side understood to be the strongly held view of our British Indian colleagues that I agreed on the last occasion to a bicameral Legislature. I would, however, beg this Committee always to bear clearly in mind the content of the possible subjects within the scope of the Legislature and the best method of dealing with them, and, with this end in view, to decide on the strength and composition of the Legislature which will deal with them. It is conceded on all hands that the Units of the Federation will have the fullest possible autonomy. The Governments of these Units in British India will be wholly Indian; they will be fully responsible to democratic Legislatures. It will be these Units that will administer finally in full and unimpaired authority the subjects which most concern the people; their land revenue administration, their police administration, their system of education, public health, their development of education, irrigation, agriculture, and so forth. The subjects which will fall within the Federal sphere will be comparatively few. They will be largely administrative and very technical in

nature, such as Communications, Posts and Telegraphs, Currency, and so on. It would therefore seem to be both simpler and more economical, without detracting in any way from its Indian and democratic character, to have these Federal subjects brought within the purview of one Chamber representing the Governments of the federating Units, like the old German Bundesrat. There would, in the first place, be economy in money, which is a very important consideration in a poor country like India. There would secondly be economy in the time taken for the despatch of public business, which is also an important consideration in a country where provincial representatives will have to travel long distances to the Federal Capital. There would thirdly, be economy in personnel in not denuding the Provinces of such a large number of their best and most representative men from nation-building work and making them cast longing eyes to the more spectacular environment of Delhi and Simla. It would also be simpler in so far as procedure is concerned if we had a unicameral Legislature; none of the questions under this Head 3 would arise.

These are some of the reasons for which, under Head 1, I would strive to make the Federal Legislature in any case, whether unicameral or bicameral, as small as possible, and to devise measures which I think are practicable—which will serve, on the one hand, to satisfy the democratic sentiments of British Indian statesmen and the desire voiced by His Highness of Sangli not to be excluded from representation, on the part of the so-called smaller Indian States, whilst at the same time—as I hope to show later on to my fellow representatives on the Indian States Delegation—to provide a bridge for some valuable elements in the Dholpur-Pattani scheme.

If, however, British Indian sentiment—and I would be the last person to ignore a sentiment, if widely and strongly held, as was shown when last year I gave way in favour of two Houses out of deference to what I then understood was the unanimous British Indian sentiment—remains inexorable in favour of two Houses, then I submit that the powers and functions of both Chambers should be equal. There can be no analogy between the British House of Commons and House of Lords or the Council of State and the Legislative Assembly, and the Lower and Upper Houses of the future Indian Federal Legislature. I am constrained to use the words " Upper " and " Lower " as they have been used in this debate. They are really misnomers; and, in my view, other names should be used to describe the two wings of the Federal Legislature. The two Houses will not represent one the people and the other a hereditary aristocracy, but different points of view. I do not believe in one Chamber being fashioned with the set purpose of being a stabilising influence over the other. I would endeavour to make them both equally stable. If we adopt the bicameral principle, the Upper House will presumably represent the Units of the Federation, whether they be British Indian Provinces or Indian States, and the Lower the Federation as a whole. What is neces-

sary is that the highly technical and mainly administrative subjects, which it will fall to the Federal Legislature to consider, should be dealt with by those who can approach them with different sets of experience and knowledge. That is why I desire that such experience and knowledge should be distributed over the two Chambers so as to make them both equally important and valuable.

We must always keep before us a picture of the future state of affairs when we are discussing and deciding upon the Federal Structure. In the Provinces, there will be a complete autonomy with the responsibility of the Executive to the Legislature. It will be the Provincial Executive and the Provincial Legislature which will deal with matters affecting the day to day life of the ordinary individual. The Federal Executive and the Federal Legislature will, on the other hand, be dealing with administrative and what might almost be called technical matters. The Federal Structure need not and should not, therefore, be modelled on what the Provincial Structure may be; for the latter will be designed for purposes quite different from the former. As between the two Houses of the Federal Legislature, there will not be the same conflict of interests as between a democratic house and one representing the hereditary principle; but there will be need for adjustments between the two. I wish therefore—if we are to have two Chambers—to start them on a footing of absolute equality so far as the written constitution is concerned. I would not, therefore, exclude from the Upper House the power of initiating a Money Bill or amending a Vote of Supply.

It is possible, as has happened in other constitutions, that one Chamber, owing to its greater intrinsic merit, may gain superiority over the other—the Upper over the Lower or *vice versâ;* but we must leave that to time and experience and the unwritten, but no less binding, law of custom and usage. It may be that in time one class of questions may come to be vested in one House and another in the other. It may be that the Government of the day may find one House with regard to any particular question more suited for being the initiating Chamber than the other. There will be further a transitional period, as Sir Provash Chunder Mitter said, before such matters settle down as definite features of our constitution. Question (iii), which is as to where the deciding voice is to lie, does not therefore arise.

With regard to question (iv), if the principle of equality of the two Chambers is accepted, it necessarily follows that all Bills, including Money Bills, should be introduced in, and amended by, either Chamber, and that the function of voting Supply should be shared by both Chambers. So far as Bills, including Money Bills, are concerned, that function is even now shared by both the Houses of the Indian Legislature as at present constituted. The voting of supply, however, is, I understand, at present vested in the Lower House of the Indian Legislature alone. Given equality of the two Chambers, then logically the Federal Upper House should have the power of voting supply in the same way as the Federal Lower

House. In practice, also, I can see no disadvantages in this. The Federal Budget—which, by the way, will be much less complicated than the present Central Government of India Budget—can be introduced simultaneously in both Houses of the Federal Legislature. A time limit could be imposed on both, as it is now imposed on the one House, within which they should complete the voting. Following that there might be a short period which could be reserved for a Joint Session of both Houses to resolve any disagreements which may have become apparent in the course of the voting in either House. I realise that the Upper House, by refusing to pass the Annual Money Bill, could compel consideration of the expenditure policy of the Government; but that is cumbrous, and therefore not so effective as the power to vote on each item of Supply directly it comes up. I shall give a concrete example. A Member of the Upper House might consider that there was extravagance in the opening of new postal circles. He could raise that question more effectively and more conveniently on the Post Office Vote than when the whole Money Bill came up for consideration. Refusal to pass a Money Bill would require very grave reasons before such action could be justified. The result would be that, for the sake of small but necessary economies, it would not be considered worth while by the Upper Chamber to take such a drastic step. The Budget would be introduced in both Houses by the Government of the day, and the Government, being responsible to both Houses, would necessarily have a majority in each. Occasions for difference between the two Houses would never be such as could not be resolved by the Government, which, being responsible to the Legislature, would *ipso facto* have a majority in both Houses, as I have already said. A separate discussion of the Budget Heads in both Houses, however, would make the Government better acquainted with the trend of opinion in both. It is for this reason that I would prefer the function of voting Supply to be discharged separately by the two Chambers, instead of making a Joint Session even for this purpose a normal feature of the constitution.

Coming to (iv) (*c*)—when a joint sitting is necessary for the passage either of legislation or of grants in the event of a difference of opinion between the two Houses, the Joint Session, in my view, should be composed of an equal number of representatives of each house. I find myself practically in complete agreement with what Mr. Zafrullah Khan has so lucidly explained in this regard. I am given to understand that, even in the present Indian Legislature, whenever a Joint Committee of the two Houses is appointed to consider legislation other than Money Bills, an equal number of representatives from each House are put on the Committee. The powers of the two Houses of the present Indian Legislature are admittedly unequal in view of the exception in regard to finance, whereas we want the two Chambers of the Federal Legislature to have equality. All that I want, therefore, is that the present practice be continued, with this addition, that the principle of equal

representation be adopted in the case of all legislation, including Money Bills.

I do not hold with the view, as I have repeatedly stated, that one House should be a check on the other. As I have made it clear in the course of my speech and my previous utterances, my preferences are for a unicameral Legislature; but if you are going to have two Chambers the composition of which reflects different points of view, then I submit that both these Chambers have an equal concern in matters of Federal taxation.

If you will look at the subjects with which the Federal Legislature will deal, you will at once see that they will affect the Federal Units as whole units very intimately. Take, for example, legislation in regard to either Customs or Railways. A Federal Unit like Bombay or Madras or Hyderabad will have to examine such legislation from the point of view of its effect on the Unit as a whole, the interests of the individual inhabitants of Madras, Bombay or Hyderabad being subsidiary to and dependent on the interests of the Unit to which they may happen to belong. In this matter analogy is sometimes drawn from what obtains in other countries, and especially in those countries where unitary systems of government prevail; but such analogies are apt to be misleading. For where there is unitary government, the popular House must needs be the guardian of the purse; whereas, under a Federal Government of India, in so far as Federal subjects are concerned, it will be for the consideration of Federal Units as a whole how Federal taxation will bear on the people of those Units, in all the departments of Government, including those entrusted directly and finally to those Units. Here again, however, we are open to argument. If our British Indian colleagues, for sufficient reasons, would have it necessarily so, we of the Indian States will be prepared to reconsider our position when Federal finance comes up for discussion. It may be that, if a scheme of Federal finance is adopted that is entirely acceptable to the States, we will agree—if our British Indian friends so insist—that differences with regard to Money Bills be resolved in a Joint Session of the full strength of the two Houses by a bare majority. This, I must make clear, applies only to Money Bills and the voting of Supply. For all other legislative purposes we want the Joint Session to be composed of an equal number of representatives from each house.

So far as (v) is concerned, I agree with Sir Tej Bahadur Sapru that ordinarily and technically the power should belong to the Governor-General, but that the Government of the day would exercise a potent voice in the matter.

The answer to question (vi) must, of course, be in the affirmative.

Sardar Ujjal Singh: My Lord Chancellor, I would not like to enter into any discussion with regard to the question of a unicameral Legislature and bicameral Legislature, for we discussed this subject at great length under Head 2; nor would I like to deal with the existing system that we have got in India and to enter into

any criticism or draw any inspiration from the existing Council of State, for the present Government of India Act gives such vast powers to the Governor-General that the Council of State has had no opportunity of asserting itself, and the provision of a Joint Session has, I believe, not once been tried.

I would like to deal with the points which come under Head 3 in the order in which you have placed them. With regard to No. (i), it is agreed generally that the assent of both Houses is necessary for the passing of any legislative measure and it follows that the powers of both Houses should be approximately equal. I would only make an exception with regard to the powers of these two Houses in connection with money matters; and this exception is generally adopted in most other constitutions, not only unitary constitutions but federal constitutions.

So far as money matters are concerned, I would like to give a few illustrations from present-day federations. Take first the Dominion of Canada, a Member of the British Commonwealth. There, Sir, Section 53, which has already been pointed out by various speakers, only says that—

> "Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons."

In Canada the powers of the two Chambers have not been definitely defined. The reason for this is that, under section 18, it is laid down that Canada will follow generally the British model. It says:—

> "The Privileges, Immunities, and Powers to be held, enjoyed, and exercised . . . ."

Dr. Ambedkar: That has no relevancy to this; it is privilege inside the House.

Sardar Ujjal Singh: I beg your pardon.

> "The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons . . . ."

it does not mean the Members of the House of Commons.

Dr. Ambedkar: No, Sir. If you refer to the Preamble, you will see there that the Canadian Constitution lays down that the Canadian Constitution shall be similar to that laid down in the United Kingdom; and you will see that the relations between the House of Commons and the House of Lords are to be the governing principle in Canada, but the privileges of the House of Commons in Canada are not affected there.

Sardar Ujjal Singh: I beg to differ. Besides the Preamble, section 18 says:—

> "The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the Members thereof respectively shall be

such as are from Time to Time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof."

So in Canada the powers of the two Houses are not definitely defined the exception of Money Bills, as to which it is laid down that Money Bills shall originate in the Lower House. Otherwise it implies that the powers are equal, but they are to be defined from time to time by the various Acts of the Canadian Parliament.

Then, if you come to the Australian Constitution, section 53 again lays down a different principle for money Bills. Section 53 reads:—

"Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate."

Then again:—

"The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws."

So that here again exception is made with regard to Money Bills.

Then, coming to modern constitutions—those of Czechoslovakia and the German Republic—in Czechoslovakia, sections 41, 42, 43 and 44 lay down the procedure. Section 41 lays down:—

"Proposals for legislation may originate either with the Government or in either Chamber.

2. Every proposal made by Members of either Chamber shall be accompanied by an estimate of the financial issue involved and by a proposal for the defraying of the necessary cost.

3. Proposals of the Government for Budget and Army Bills must first be presented to the Chamber of Deputies."

Section 44 says:—

"A measure passed by the Chamber of Deputies shall become law, despite an adverse decision of the Senate, if the Chamber of Deputies declares, by a majority of 50 per cent. of all its members, that it adheres to its first decision.

Should the Senate reject a Draft Bill passed by the Chamber of Deputies by a majority of all its members, the Bill becomes law provided that the Chamber of Deputies re-enacts its decision by a three-fifths majority of all its members."

In the German Constitution, article 74, the Reichsrat, the Upper House, has practically no powers. It says:—

"The Reichsrat"—(that is, the Upper House)—"has the right of protest against a law passed by the Reichstag.

This protest must be lodged with the Federal Government within two weeks after the final vote in the Reichstag, and must be supported by reasons, presented within another two weeks at latest.

In case of a protest, the law shall be brought before the Reichstag for further consideration. Should the Reichstag and the Reichsrat not arrive at an agreement, the President of the Federation may, within three months, order an appeal to the people upon the subject in dispute. Should the President not make use of this right, the law does not come into operation. Should the Reichstag decide by a two-thirds majority against the protest of the Reichsrat, the President must either promulgate the law within three months, in the form approved by the Reichstag, or order an appeal to the people."

In the case of Money Bills, in practically every constitution a provision is made that they should originate in the Lower House, and in many constitutions the Lower House has a predominant voice. In the Australian Constitution it is practically the Lower House that has the final say. I would, therefore, suggest that, with regard to Money Bills, the initiative should vest in the Lower House alone; secondly, that the Upper House should not amend a Money Bill, but, as in Australia, should submit suggestions to the Lower House which the Lower House might consider; and, thirdly, that in order to allow those suggestions of the Upper House full consideration by the Lower House, instead of a Joint Session, the device which has been proposed (and with which I agree) with regard to other legislation—Section 44 of the Czecho-slovakian Constitution—may be adopted. This Section also gives more or less the same opportunity for consideration of a Bill as it is proposed that the Joint Session should do. After reading this Section it will be clear that full opportunity is given to the Members of the Lower House to consider the proposals of the Upper House with regard to the Bill. Then, if the Lower House passes the measure again by a three-fifths majority, it becomes law. Therefore, I would suggest that, with regard to the Finance Bill, the Lower House should have an opportunity of reconsidering any suggestions that the Upper House may have made; and then, if the Lower House again passes that Bill by a particular majority, say three-fifths, the Bill ought to be considered as passed, and there should be no need for a Joint Session.

Coming to (iv)—I have said that all Bills, except Money Bills, may be introduced in either Chamber. With regard to (*b*), I think that the function of voting Supply should vest with the Lower House under the conditions that I have stated. With regard to (*c*), I think that differences between the two Chambers should be reconciled in all matters excepting Finance, in which I would like the adoption of Section 44 of the Czechoslovakian Constitution, *viz.*, a Joint Session of all the Members of both Chambers sitting together and deciding by a bare majority of the Members present. I have carefully studied the views which have been put forward with regard to the necessity of providing for a two-thirds majority or an absolute majority. It is perfectly true that, if the number of Members of the Lower House is three hundred and of the Upper House one hundred and fifty, a bare majority would mean that, if all the Members were present and if two hundred and twenty-six out of four hundred and fifty Members were in favour of that measure, the measure could be carried. But the question should be examined from another point of view. Supposing that the legislation is carried through the Lower House by a majority of, say, two-thirds; then two hundred Members of the Lower House would be in favour of that measure and one hundred against it. Supposing, for example, that it is a reactionary measure; in that case one hundred Members of the Lower House are not going to make common cause with the other Members of the Lower House, but are likely to make common cause with the Members of the Upper House, more or less representing a conservative view. So that those who insist upon a particular majority in a Joint Session pre-suppose that, at the Joint Session, the Members of the Lower House will act individually as representing one Chamber, and the Members of the Upper House will also act individually as representing the other Chamber. There is no clash between one Chamber and the other. It will be a difference of opinion, and it may be an honest difference of opinion, on a particular majority, say two-thirds, in a Joint measure. Therefore, if the device of requiring a particular Session, were adopted, the effect of it would be that, even if a popular measure were carried through in the Lower House by a three-fourths majority, it might have no chance of acceptance in a Joint Session. The Upper House should certainly exercise a stabilising influence, but it should not be a block in the progress of India and it should not be allowed to make a democratic institution a farce.

With regard to (v), technically speaking it will be the Governor General who will call for such a Joint Session; but in all cases a Joint Session should be convened except when the Mover of the Bill does not wish to press his measure and allows it to lapse.

With regard to (vi), even in South Africa some device is adopted before a Joint Session is resorted to, namely, that the measure should be passed again in a second Session of the Lower

House before the machinery of Joint Session is put into operation. In my opinion, some time ought to elapse before a Joint Session is called. On the last point I quite agree with many of my friends that provision for all these measures should be made in the constitution, and it should not be left to any convention or custom.

H.H. The Maharaja of Bikaner: My Lord Chancellor, I will confine myself merely to making a couple of observations under Head 3, and will, when speaking later on Head 1, ask to be permitted to make a few general observations about the standpoint of the States generally in regard to the matters coming before us.

May I say, first, that the Princes and States have no desire to render the work of the future Federal Government impossible, and that they are most anxious in every reasonable manner possible to co-operate with British India and to avoid any conflict. We want a constitution which will work, where the components will be parts of a Federal whole, not divided into States on the one side and British India on the other, but members of one family, working together in peace and harmony.

In the observations made regarding Head 3, it has to be pointed out that we have yet to discuss constitutional safeguards which are matters of especial importance to the States. We have also to discuss the subjects included in the field of Federal finance; and the views of the Indian States Delegation expressed to-day are subject to any reconsideration that may be necessary after we have dealt with these two points. Therefore, although it is hardly necessary here—still, in view of the alarm created in the minds of the Princes and States in India regarding the subjects now under discussion and other details, it is perhaps as well to add on this occasion that our views under Head 3 are also subject to two obvious guarantees, namely (1), that the Federal Government will derive its revenues by " indirect " taxation and will not be empowered to impose " direct " taxation on the Indian States or to demand any fresh contributions; and (2), that there will be no discrimination against the States and their subjects in regard to taxation or in any other matter—a point on which I venture to think all will be agreed. I need only say further that the States are deeply interested in the establishment of a stable and sound Federal Government.

Dr. Shafa'at Ahmad Khan: Lord Chancellor, after what has been said by Sir Muhammad Shafi and Sir Tej Bahadur Sapru, I need not detain this Committee with any elaborate discussion of the various problems. I would merely like to emphasise two or three points. The first, Lord Chancellor, is that, in framing a constitution for the Upper and the Lower Houses, we must keep one aim constantly in view. It is this—that the Upper House is going to be the custodian of the interests of the States of British India and of Indian India. Consequently the Upper House must be such as will be able to protect and safeguard those interests. So it is from this point of view, Lord Chancellor, that we should

discuss the question of federation as regards the two Houses. The States, both from British India and from Indian India, will have certain rights defined in the constitution. There will be certain subjects reserved for the States and others reserved for the Federal Government. This will be a check on the power of the Federal Government in its relation to the Provincial Governments; but there will be yet another check, which I may call the internal check. This will exist in the form of a strong and influential Upper House. Therefore, we need not merely the check in the form of division of subjects, but also the check imposed by the presence of a really influential and representative Upper House. This internal check on the power of the Federal Government would not be in the sense of antagonism, not in the sense of conflict, and not in the sense of any clash between the two component elements of the Federation and the Central Government, but in the sense of the protection of the interests of the component Units. So it is from this point of view, Lord Chancellor, that I look at this question.

The other point to which I would like to draw your attention is that our Upper Chamber, which I should call the Senate, will be an altogether different body from the Council of State of the present time. It will be different and it ought to be different.

Chairman: I do not think you need labour that point at any length, because I do not think anybody would dispute what you say on that head.

Dr. Shafa'at Ahmad Khan: The Upper House will, in my opinion, contain the ablest and the most influential leaders both from British India and from the Indian States. I am certain that, when the Upper House develops its powers and acquires influence, the Indian States will send their ablest representatives and their most experienced Ministers to the Upper House. Consequently the Upper House will become, if I may say so, the foundry in which public opinion is melted and cast. It is from this point of view that I envisage the constitution of the Upper House.

Lord Chancellor, the question of the power of the Upper House is therefore of supreme importance. One point has been raised to-day by Sir Akbar Hydari. He said that the two Houses should have co-ordinate and equal powers. I do not wish to commit myself on this point at this stage. I would simply like to point out that, if they are going to have co-ordinate powers, then there will have to be responsibility of the Ministers to both the Houses or complete irresponsibility, in other words, presidential form of government. That has been the practice in the United States of America and in Switzerland. In these two countries there is no responsibility of Ministers and the system is entirely different from what is called the Parliamentary system. Therefore this question can only be discussed if and when we have decided the question of the responsibility of Ministers to one House or to both Houses.

Sir Akbar Hydari: I think Sir Tej Bahadur Sapru made it clear that they would be responsible to both.

Sir Tej Bahadur Sapru: No.

Sir Akbar Hydari: That the defeat of the Ministry could be only by . . . . .

Sir Tej Bahadur Sapru: That was with regard to a vote of no-confidence only.

Dr. Shafa'at Ahmad Khan: Then, Lord Chancellor, the other question is whether the Upper House should have the power to amend or whether it should have merely the power to suggest amendment. From a practical point of view I admit that there is not much material difference; but I should prefer to get this practice regularised and formalised instead of leaving it in the unsatisfactory position in which it now is in the Australian Constitution. I believe that the report on the working of the Australian Constitution which has just been published will throw further light on the working of the Senate in Australia. A number of suggestions for amendment were made by the Australian Senate, but they did not exercise that influence on the Lower House which they would have exercised if the position had been legalised and the power of the Senate had been definitely affirmed and explicitly stated in the constitution itself. From this point of view, therefore, I think it would be better if the Upper House were given this power explicitly in the constitution. I do not think there is really much material difference; but it would make a difference ultimately in the actual day-to-day practical working of the constitution of the new India.

The other point is with regard to a possible deadlock between the two Houses. In all constitutions you must have—to use an Americanism—an emergency exit from a deadly deadlock; and for this emergency exit various provisions have been made and various remedies have been suggested. My humble opinion is that, when we are studying any constitution, we must see whether that constitution has actually worked well or not. It is not enough to see whether there is such and such a provision in the constitution, but we must go further and see how that provision has actually worked. The second point I should like to emphasise, therefore, is that, when drawing analogies, we must be very careful to pay regard to the similarity of conditions in the various countries.

I have the greatest possible respect for the experience and knowledge of Sir Tej Bahadur Sapru, but on this point I beg to differ from him. I believe that the South African Constitution is not and really cannot be a good model for us, even on this point. I hold this view because the South African Constitution is essentially a unitary constitution. It is framed with the express and avowed object of drawing all the powers of the Provinces into the fold of the Central Government. The original idea, of course, was to have a true and genuine federation; but when the Convention

met in 1908, the federation was transformed into a union, with the result that, at the present time, the Provincial Governments in South Africa are virtually glorified local bodies, and the proposal has now been made that even the small powers they possess should be taken away from them. The South African Constitution, I beg to submit, is therefore not really a very good model for us.

If we want a pattern suitable for India, I suggest that we must go to the constitutions of countries the conditions of which are similar to ours; and the constitutions which I submit can really help us are constitutions such as those of the United States of America, of the old German Empire and of Australia. As I have already emphasised, however, it is important to see how the various provisions actually work in practice. We must ask the question which every pragmatist asks—"How does it work?"

The Australian Constitution has failed utterly so far as the Senate is concerned. The recent report on the working of the Australian Constitution admits that the Senate has proved utterly useless and powerless so far as protection of the rights of the various States is concerned. Consequently, when we want to apply some of the provisions of modern constitutions, I beg to submit that we should apply only those provisions which were passed to deal with conditions analogous to those in India. From this point of view I submit that it would be better, in the case of a deadlock, not to follow the South African model, but to follow the Australian model, or—as my friend, Sardar Ujjal Singh, said just now—the model of the Czechoslovakian or German Constitutions. I might also cite the provisions of the British Parliament Act of 1911 in case of deadlock. So far as South Africa and Australia are concerned, they do not make any distinction in the case of deadlock between Money Bills and ordinary Bills. In the case of Money Bills, I think the time will have to be shortened to a fortnight or a month, and within that time a joint conference between the Upper and Lower Houses must be held; but, in the case of ordinary Bills, I should be inclined to copy the provision of Section 57 of the Australian Act as it stands.

Sir Tej Bahadur Sapru: Do you suggest that, following the Australian model, there must be a dissolution before a Joint Session takes place? That is of the essence of the Australian model.

Dr. Shafa'at Ahmad Khan: I would not go so far as that; my point is that I want to interpose delay, and sufficient delay. The delay imposed in the South African Constitution is not sufficient for my purpose. But I do not want any dissolution; I merely want a substantial delay.

Sir Tej Bahadur Sapru: In other words, instead of three months you want six, or instead of six months you want nine; but you do not want to go the whole length of the Australian Constitution and have a dissolution?

Dr. Shafa'at Ahmad Khan: The essence of that Section is that there should be sufficient delay to prevent the matter being considered from a party point of view.

Mr. Joshi: You think the 1911 British Act is simpler and is to be preferred?

Dr. Shafa'at Ahmad Khan: I only make that suggestion.

Dr. Ambedkar: The views which have been expressed so far have struck one note which I think is common to all; and that is, that in regulating the relations of the two Houses in the future Constitution of India, there should be equality of status, equality of power, granted to them, except of course in such small and minor matters as the right of initiative with regard to Money Bills and the right of voting Supply. Bearing that, the general consensus of opinion, I think, was that the two Houses should enjoy equality of position.

Now, in all humility and with all respect to the gentlemen who have spoken before me, I must say that I cannot agree with their views. The reason for the difference of opinion that exists between myself and them appears to me to arise from the simple fact that we take a totally different view of the functions and the purposes of the Second Chamber. I could quite understand the views of those gentlemen who propounded yesterday the proposition that the two Houses must enjoy co-equal powers if our Legislature were so constituted that each Chamber represented, to use ancient language, separate Estates of the Realm. If the Lower House were composed of classes which were not represented in the Upper Chamber, and if the Upper Chamber were composed of classes which were not represented in the popular Chamber, then there would be something to say for a view of the sort that was expressed yesterday. But, if our Legislature were constituted on the plan of what I call separate Estates of the Realm, I, for one, would not give my consent to a bicameral Legislature; for, speaking for the masses—I am a rival of Mahatma Gandhi in this respect—speaking for the masses, I could not consent to such a Legislature, and thereby consign their destiny to a government working under a system of this kind and thus—to use an expression of the late Lord Asquith—functioning under a system of false balances and loaded dice.

As a matter of fact, the Houses of our Legislature, unless I am mistaken, are not going to be constituted on the basis of separate representation of separate Estates. If I understand correctly the composition of the future Legislature, I take it that the Lower Chamber will be a popularly constituted Chamber—a Chamber which will represent each and every class, each and every shade of public opinion. That being so, I submit that we cannot have a Second Chamber which would claim to be its rival or which could claim to have co-equal status. That being my view, I submit,

Lord Chancellor, that, so far as the question propounded in sub-head (ii) of Head No. 3 is concerned, I would answer it by saying that the decisive voice must be vested in the Lower Chamber.

Chairman: Would you put that in the constitution, Dr. Ambedkar?

Dr. Ambedkar: Yes, I think it could be done.

Chairman: It could be done; but would you favour it being done?

Dr. Ambedkar: Perhaps you would be kind enough to give me time to deal with that later on. This must particularly be so in the case of Finance Bills. The Second Chamber, in my opinion, may have the power to make suggestions for the consideration of the Lower House, which the Lower House may accept if it likes; but the Second Chamber shall not only have no power to initiate a Finance Bill, but it shall not have the power to amend it; and a Finance Bill must become law, as passed by the Lower House, even if it was rejected by the Upper House.

Now, I recognise that the proposal which I have made appears to be a very radical proposal—in fact, I think it might be described as a revolutionary proposal; but, My Lord Chancellor, if so, it is only because yesterday, when our learned colleagues Sir Tej Bahadur Sapru and Sir Muhammad Shafi dealt with this question, they did not refer to some of the most modern constitutions. It was a surprise to me that they should have confined themselves to drawing illustrations from the relatively ancient Constitutions of the Dominion of Canada, Australia, or South Africa. The Canadian Constitution was framed in 1867, the Australian in 1901, the South African in 1909. I do not know why they did not consider the constitutional relations that exist between the House of Commons and the House of Lords here. I do not know why they did not consider the relations that exist, for instance, between the two Houses in Ireland; nor do I quite understand why they forgot to consider the proposals of the Bryce Committee. If they had done so, I am sure that the surprise with which this proposal of mine has been received by members of this Committee would not have existed; but, as they have not done so, I would venture to support my proposal by citing precedents for it. Now, my proposal is exactly the proposal that is embodied in the Parliament Act of 1911. There it is provided that, so far as a Money Bill is concerned, the House of Lords may consider, but the House of Commons is supreme; and it is provided in the Act that when a Money Bill is considered and passed by the House of Commons it shall become law, notwithstanding the absence of consent of the House of Lords, provided His Majesty gives his Assent to the Bill. Again, My Lord, this is the relationship that is laid down between the two Houses, so far as Money Bills are concerned, in

the Irish Constitution. Section 35 of the Irish Constitution says:—

> "Dáil Eireann shall in relation to the subject matter of Money Bills as hereinafter defined have legislative authority exclusive of Seanad Eireann."

Then Article 38 says that—

> "Every Bill initiated in and passed by Dáil Eireann shall be sent to Seanad Eireann and may, unless it be a Money Bill, be amended in Seanad Eireann,"

and so on,

> "but a Bill passed by Dáil Eireann . . ."

and then the rest follows that Article.

The next authority that I would cite in support of my proposition is the recommendation of the Bryce Committee. Now, as all of us know, this was a most representative Committee—a Committee the membership of which was drawn both from the House of Commons and from the House of Lords—and the Committee came to the unanimous conclusion that, at least so far as Money Bills were concerned, the provisions embodied in the Parliament Act of 1911 were right and proper.

Then, My Lord, I would cite a third authority in favour of this proposition. The Report of the Bryce Committee and the recommendations made by it were not shelved; they were considered by the Coalition Government of 1922. Resolutions were moved (I am glad to see that Lord Peel is here) showing what action the Government of the day was prepared to take upon the Report of the Bryce Committee. The Resolutions were placed before Parliament on the 11th July, 1922. The Fourth Resolution reads as follows:—

> "That while the House of Lords shall not amend or reject Money Bills, the decision as to whether a Bill is or is not a Money Bill, or is partly a Money Bill and partly not a Money Bill, shall be referred to a Joint Standing Committee of the two Houses, the decision of which shall be final."

The principle recommended by the Bryce Committee, that a Money Bill shall be the exclusive concern of the House of Commons, was accepted and affirmed by these Resolutions. Let me here quote the speech made by Viscount Peel, then the Secretary of State for India, on these Resolutions. In moving the Resolutions he said that the Resolutions were a general sketch laying down principles only. He went on to say that the Second Chamber should not have equal power to, or become a rival of, the House of Commons, nor have the power of dismissing Governments or making the Executive equally responsible to both Chambers.

I think that I have given sufficient authority in support of the proposition which I have placed before this Committee for its consideration.

Lord Peel: May I suggest that that was a Coalition Government?

Dr. Ambedkar: It was a Coalition Government.

Lord Peel: In a Coalition Government you cannot say everything that you want to say.

Dr. Ambedkar: Your Lordship may have made mental reservations—I cannot say—but there it is. The Coalition Government was a Government in which more than one Party had joined. Therefore, the statement made in the name of the Coalition Government was a statement which had the support of more than one Party, including Lord Peel. I submit that I have cited sufficient authority to show that the proposition that I have placed before this Committee is not a revolutionary proposition.

Sir Tej Bahadur Sapru: May I ask Dr. Ambedkar if he will give a reference to any federal constitution to support his point of view? England is not a federation, and Ireland is not a federation.

Dr. Ambedkar: That is so.

Sir Tej Bahadur Sapru: The Bryce Committee had nothing to do with a federation.

Dr. Ambedkar: My reply is that, unless your federal constitution was so composed that the Upper House exclusively represented some other interests not represented in the Lower Chamber, the proposition would stand. This has nothing to do with the form of the Government, whether it was unitary or federal.

Sir Provash Chunder Mitter: I should like to ask one question. The House of Lords was a hereditary House. Was not the Irish Upper House one at that stage also?

Dr. Ambedkar: I am submitting that even the House of Lords, which is a most ancient House, with all the dignity, traditions and privileges behind it, consented to this revolutionary change. What are the Indian States as compared with the House of Lords, if I may submit it with all due deference?

H.H. The Maharaja of Bikaner: With all due respect to the great Peers of the British Realm, the States possess sovereignty any territory which is not British territory, whereas even the most important Peers of the Realm and their estates are in a totally different position.

Dr. Ambedkar: The sovereignty is subject to the influence and power of the House of Lords.

Sir Muhammad Shafi: May I ask Dr. Ambedkar what are the privileges of the House of Lords?

Dr. Ambedkar: Taking this position, the next thing that I would submit is that the constitution should contain a definition

of what a Finance Bill is. It may be defined, as has been suggested, in the way in which it is defined in the Irish Constitution, which is not different from the one given in the Parliament Act of 1911.

The next point that I would submit, arising out of the matter, is that a Member in charge of a Bill should have the privilege of claiming that his Bill is a Finance Bill. If there is a dispute between the two Houses as to whether or not a Bill claimed to be a Finance Bill is a Finance Bill, I submit that the dispute should be resolved by the decision of a Joint Finance Committee of both Houses, in which each House should be represented by a number of Members proportionate to its strength, and in which all parties should also be represented according to their strength.

Sir Maneckjee Dadabhoy: You want to make a departure from the existing practice.

Dr. Ambedkar: Very much so.

Mr. Zafrullah Khan: If the existing practice were satisfactory we would not be here.

Dr. Ambedkar: The next matter to which I want to come is non-financial Bills. In the case of non-financial Bills I am prepared to modify the principle applicable to Finance Bills, but for only two purposes. First, the Second Chamber may have power to revise and amend non-financial Bills brought up from the Lower House, subject to the proviso that no amendment shall be made by the Second Chamber which is of a financial character. Secondly, the Second Chamber will have power to hold up, and to enforce so much delay (and no more) in the passing of a non-financial Bill into law, as may be necessary to prevent hasty action, or as may be needed to enable the opinion of the electorate adequately to be expressed upon it. In view of this, my answer to the question propounded in the sub-head dealing with non-financial Bills is that the Upper House should have the right to amend a non-financial Bill. If the amendments are accepted by the Lower House, well and good; but if they are not accepted, then the constitution should provide that, if a non-financial Bill is passed three times by the Lower Chamber in three different sessions of its life, it shall become law, notwithstanding the opposition of the Second Chamber. Lastly, I submit that these relations between the two Houses should be embodied in law, and should not be left to convention. That is all that I have to submit.

Mr. Iyengar: I had not any intention of intervening in this debate on the questions that are put under Head 3, because, on the footing that there are to be two Chambers, I was prepared to agree more or less totally with what Sir Tej Bahadur Sapru said would be the position of those on this side of the House; but the issue as to whether there should be two Chambers or only a single Chamber has again been canvassed, and as there has been so much criticism levelled against the definite statement which Mahatma

Gandhi made to this Committee in regard to the preference of himself, and those of his way of thinking, for having only a single Chamber, I deem it necessary, with your permission, to restate the position in favour of a single Chamber under the constitution that we have to devise for the country.

Lord Chancellor, nothing that was urged in favour of two Chambers yesterday has served, so far as the arguments then put forward were concerned, to shake the position that a single Chamber would satisfy all the purposes for which the Second Chamber was demanded and was desired. My friend, Sir Muhammad Shafi, in stating the case for a Second Chamber, which he said was overwhelming, gave only two reasons for that, as I understood it. The first reason was that he was not aware of any federal constitution in which there were not two Chambers. The second was that, in his experience as Leader of the Council of State, the Council of State had exercised a steadying influence on the deliberations of the Lower Chamber in the present Indian Legislature.

There was a third reason also which was put forward, namely, that with the cry of independence in the air in India, he considered it very necessary that India should not fall into the methods of Russian democracy.

Sir Muhammad Shafi: That was not the third reason; that was only a development of the second reason. The third reason was that opinion in all political circles, as mentioned by Pandit Malaviya, was unanimous in support of a bicameral Legislature.

Mr. Iyengar: I submit, My Lord, so far as that statement is concerned, that the speeches and pronouncements that have been made here, beginning with Mahatma Gandhi, and ending, if I may say so, with my friend, Mrs. Subbarayan, make it clear that there was no such unanimity in favour of a Second Chamber as they thought there was. As far as the question of a Second Chamber is concerned, I do not think the position could have been put in better form for the purposes of our dispassionate discussion—a discussion in which we should not be bound merely by precedents or pre-conceived notions—than it was put by Mahatma Gandhi. Mahatma Gandhi said this:—

> "I am certainly not enamoured of and I do not swear by two Houses of Legislature. I have no fear of a popular Legislature running away with itself and hastily passing some laws of which afterwards it will have to repent. I would not like to give a bad name to, and then hang, the popular Legislature. I think that a popular Legislature can take care of itself; and, since I am now thinking of the poorest country in the world, the less expenses we have to bear the better it is for us. I do not for one moment endorse the idea that unless we have an Upper Chamber to exercise some control over the popular Chamber the popular Chamber will ruin the country. I have no such fear; but I can

visualise the state of affairs when there can be a battle royal between the popular Chamber and the Upper Chamber. Anyway, whilst I would not take up a decisive attitude in connection with it, personally I am firmly of opinion that we can do with one Chamber only, and that we can do with it to great advantage. We will certainly save a great deal of expense if we can bring ourselves to believe that we can do with one Chamber."

My Lord, the argument that you do not find to-day any federal constitution without two Chambers is, I submit, no argument at all. The reasons why there should be two Chambers were not elucidated by my friend, Sir Muhammad Shafi, but we get them elucidated by Sir Tej Bahadur Sapru in his speech. I think his main point was that, so long as you require the representation of States and Governments as well as of the people of the States, you must have one Chamber to represent States and Governments and another Chamber to represent the people of those States. Now, all that I can say, so far as that is concerned, is that neither the Federal Structure Sub-Committee when it met last year, nor the Committee this time, has yet accepted the principle that the Lower House should be constituted upon a direct adult suffrage representing the people of Indian States as well as British Provinces together. Paragraph 25 of the Report of the Federal Structure Sub-Committee says this:—

> "The general aim of Federal constitutions has been to provide one legislative Chamber which represents primarily all the federating units as such, often on a basis of equal representation for each unit, and a lower chamber which represents, primarily, the population of the whole federal area: and in applying this plan, constitution-makers have commonly provided that the representatives of the federating units in the distinctly federal chamber shall be chosen by the Governments or Legislatures of those units, while the representatives of the population of the federal area shall be returned by some more popular form of election: it has commonly been provided further that the distinctively federal chamber should be the smaller of the two."

And this is what I want to emphasise to the Committee:

> "But India's own practical needs and conditions must be the governing factors, and no constitution, however theoretically perfect, and however closely modelled upon precedents adopted elsewhere, is likely to survive the tests of experience unless it conforms to the needs and genius of the country which adopts it, and unless it is capable of adaptation and modification as the character of these needs is proved in the working. To meet these needs the federal organisation must be conceived not as a rivalry of conflicting

> elements, but as a partnership for the devising and efficient application by common consent of policies required in the common interest. For such a partnership the stability of the Federal Government is of the first importance."

Sir Tej Bahadur Sapru: May I ask you whether you agree with what you have read?

Mr. Iyengar: Yes, certainly.

Sir Tej Bahadur Sapru: Very well, then, there is no difference.

Mr. Iyengar: No; but this does not conclude the question of Second Chambers. On the other hand, I submit, My Lord, that the question as to what is suited to our needs and requirements should be answered without reference to precedents. The principal reason why in our country we want a single House of Legislature and not two Houses, is that the latter arrangement involves a needless multiplication of machinery, that it will promote conflict, and, above all, that it will inflict a needless and great expense upon the people of the country. That is the ground upon which Mahatma Gandhi very clearly stated it when he put the position:—

> "Since I am now thinking of the poorest country in the world, the less expenses we have to bear the better it is for us."

With regard to that, I have not heard a single argument upon which we can say how this expense can be saved.

Dr. Ambedkar: But I thought last time you supported a bicameral Legislature.

Mr. Iyengar: No, I did not. I am sorry to say it, but my friend is entirely mistaken. All I can say, Sir, is that every purpose for which a Second Chamber could be devised and constituted can be provided for by adopting a single Chamber and by adopting such expedients as are necessary to provide for the purposes for which a Second Chamber is proposed to be brought into existence. On that I submit, My Lord, that Mahatma Gandhi has put the position perfectly fairly. Therefore I feel we should not go wrong if we tried the method of having one Chamber only. Make it as perfect as human ingenuity can, by all means, but be satisfied with only one Chamber. Therefore I do not think we should treat the question of adding a Second Chamber as *res judicata*, because I find that my friend, Sir Akbar Hydari, once again definitely stated to this House that he was throughout in favour of only a unicameral Legislature, and that he assented to the provision of two Chambers merely because he did not want definitely to dissent on that.

Sir Tej Bahadur Sapru: May I know whether the Congress would accept the unicameral Legislature suggested by Sir Akbar Hydari?

Mr. Iyengar: The question whether any particular unicameral Legislature is a good one or not is dependent on the question of

what the composition of that Chamber may be. So far as that is concerned the Congress is perfectly clear as to what kind of unicameral Legislature it wants. Sir Akbar Hydari's support of the unicameral Legislature was not based on any particular composition he sought to give it.

Sir Maneckjee Dadabhoy: What was the decision of the All-Parties Conference on the matter?

Mr. Iyengar: I am going to answer that question. My Lord, I submit that, having in view the purposes for which a Second Chamber is required, namely the power of delaying hasty legislation and giving a suspensory veto on certain projects of legislation involving particular issues, and so on, it would be perfectly possible by means of suitable provisions with regard to the method of action of a single Chamber to achieve those purposes for which it is sought to bring a Second Chamber into existence at such huge expense and inconvenience in such a great continent as India.

Sir Tej Bahadur Sapru: May I interpose for one moment? Who is to provide the suspensory veto?

Mr. Iyengar: So far as the suspensory veto on legislation is concerned, I am sure that in respect of certain matters we may provide that a particular proportion of the Legislature may exercise a suspensory veto.

Sir Tej Bahadur Sapru: Not the Crown?

Mr. Iyengar: No, no. Both in the Nehru constitution, I may remind Sir Tej Bahadur Sapru, as well as in the Congress, both earlier and later, we have always provided that such a suspensory veto on legislation should be arranged for in respect of certain important communal or religious rights. I do not think, therefore, that, from the point of view of suspending or delaying action, a Second Chamber is necessary.

Sir Muhammad Shafi: Who is to exercise the veto and in what circumstances is it to be exercised?

Mr. Iyengar: The suspensory veto will be in terms of the clauses provided in the Fundamental Rights under the Nehru Constitution.

Sir Tej Bahadur Sapru: Is it or is it not a fact that the right of veto under the Nehru Constitution is given only to the Crown, and to no other body?

Mr. Iyengar: I am afraid my friend, Sir Tej Bahadur Sapru, is using the words in a technical sense. I am speaking of the suspensory veto in the sense that it is possible for a particular proportion of the Legislature to say that certain legislation shall not be passed because they have been given the right to stop or delay it.

Sir Maneckjee Dadabhoy: Who is to exercise that right?

Mr. Iyengar: The people who are of that opinion.

Sir Muhammad Shafi: What do you mean by "people"? Do you mean outsiders or Members of the Legislature?

Mr. Iyengar: I certainly yield to my friend, Sir Tej Bahadur Sapru, so far as the use of legal language is concerned. I am not certain whether what I refer to is correctly described as a suspensory veto or not; but I am not concerned with that. I am only concerned with making clear my own idea on the matter; and if I cannot clothe that idea in exact legal language, such as Sir Tej Bahadur Sapru wants to give it, I must plead as my excuse that I am not a practising lawyer. I will again plead with you to deal with the question from an independent and dispassionate standpoint. We are not necessarily to be guided by what has been done previously.

The other question that I would like to mention in regard to the relations of the two Chambers is one to which the Marquess of Lothian referred yesterday in a question put to Sir Tej Bahadur Sapru.

Mr. Jinnah: I want to understand this point, Mr. Iyengar. You say that the bicameral system will be too expensive and will be a luxury for a poor country like India?

Mr. Iyengar: Yes.

Mr. Jinnah: Let us assume that it will be expensive. What provision do you wish to be embodied which will prevent, not only any measure dealing with communal or religious questions, but any other legislation of a vital character which, if it is passed in the midst of passion and party clash, may become law if there is no Upper Chamber? What machinery do you provide to safeguard against the hasty passing of other legislation in such circumstances?

Mr. Iyengar: I will try to answer that question in this way. So far as hasty legislation of a vital character is concerned, I take it that that has got to be defined very clearly in the constitution itself.

Sir Muhammad Shafi: That is no answer to the question.

Mr. Iyengar: It will provide that a particular majority is necessary or that a particular block can be made against hasty legislation of that kind. Ordinary hasty legislation—I mean, in the normal way—can always be dealt with by the powers which I presume you propose to vest either in the Governor General or in the Crown, whichever it is, by means of which he can always send it back to the Legislature for reconsideration. That power can always exist, and I do not see why it is necessary that you should interpose an intermediate body like the Upper Chamber to perform functions which I presume you are going to lodge in the Crown.

Mr. Jinnah: Though I am not a very great admirer of the Council of State as it is constituted at present, I think you will admit that there have been occasions when the Council of State

has made amendments to Bills which we passed in the Assembly, which, on further consideration, we thought were very reasonable.

Mr. Iyengar: I entirely agree, but I do not see why that function should not be performed, in so far as it relates only to technical considerations—and I believe we only accepted technical amendments for the improvement of legislation—by any Select Committee or even by the advisers of the Crown when they return legislation as being hastily or improperly drafted.

Sir Muhammad Shafi: The Crown can never be substituted for a Second House in regard to a matter like that.

Mr. Iyengar: I agree, but I consider the Upper House an impediment. That is all the difference.

Mr. Jinnah: That depends on the composition of the Upper House. If you like, when we come to the composition of the Upper House you can make it perfect, and you can make suggestions with regard to its powers. I was only trying to get at your point.

Mr. Iyengar: There is this other difficulty to which I was going to refer, and which I said was raised by something said by the Marquess of Lothian. So far as providing that, the moment there is a conflict between the Lower House and the Upper House, there must be compulsorily a Joint Session of both Houses in regard to the matter in dispute, is concerned, Lord Lothian pointed out that, in such cases, what happened elsewhere, and what would happen in India also, was that both Houses tend to become organised on party lines, with the result that party trouble and conflict between the two Houses is accentuated. If on every occasion we find that we are going to make a majority by a combination of both Houses whenever there is a conflict, that, he said, will lead to the organisation of both Houses on a party basis from the very start, and that will perpetuate the evils that are feared. My point is that that indicates that the case for a single Chamber instead of two Chambers is not disposed of by the mere fact that we are able to resolve differences between the two Houses in the summary manner in which they have to be resolved whenever emergency legislation or financial matters are in question.

Chairman: Could you kindly help me with regard to this, because I should like to have your views. Do you envisage in the future proceedings in an Indian Legislature that there will be two parties, or do you envisage that there may be a sort of group system?

Mr. Iyengar: I am hoping that there will be two parties. It may not immediately come about, but I hope it will come about within a very few years.

Chairman: And, in the interval, do you think there will be groups?

Mr. Iyengar: There may be groups. As we are proceeding to devise the composition of the Legislature, there will be, I am afraid, groups for some years.

Chairman: Because the problems of Southern India might be different from the problems of Northern India?

Mr. Iyengar: Yes, they might be different. So far as the problems of Provinces are concerned, I am sure that, whether you represent them by means of units or by means of a bloc of Members in the Upper or Lower Chamber, in a free democratic constitution members of a particular Province will try to protect the interests of that Province; and I certainly see the point, My Lord Chancellor, which you have made, that if you are going to have a two-party system the interests of Provinces may not exactly coincide with the interests of parties, which may be divided on non-provincial lines. I see that; but so far as I view the position of the Federal Chamber as it is now proposed to be constructed, I do not see that the question of conflict of provincial and national interests has emerged so far; and that is why, when I discussed Head No. 2, I said that we must be perfectly clear as to what we propose to do. If we have a Federal Constitution in which the Federal Authority is going to deal with national problems and also to exercise a certain amount of control over the Provinces, which are Units of that Federation, it may be then that the question of whether the Provinces should be represented in a separate Chamber or not will arise. But, so far as present indications go, I am not yet clear why we want a Second Chamber; and, as I have been repeatedly trying to make out, I do not see the force of the argument that, merely because there are two Chambers in other places, therefore we should have two Chambers here, or that, merely because we find that the States have agreed to the Federation on the basis of two Chambers, we should agree to it here. As a matter of fact, I find that it is not so; and therefore I desire that on this question we should consider what are the purposes to be subserved by a Second Chamber, and see whether they could not be dealt with by making suitable provisions in regard to the composition and powers of the Lower House.

(The Committee adjourned at 1-10 p.m. and resumed at 2-30 p.m.)

Mr. Iyengar: I do not think that I have very much to add. I wish to restate the case. If it is conceded that, in respect of voting Supply, it is the Lower House that should possess the power; if it is conceded that, in regard to Money Bills, the right of initiating legislation vests in the Lower House; and if, in respect of ordinary legislation, it is conceded that the moment that there is a dispute or a conflict the two Houses should sit jointly, deliberate, and settle the matter straight away—I do not see how that position differs in any essentials from having a single Chamber. Two Chambers sitting together to dispose of all these things straight away, the moment that there is a conflict, is as good as constituting both of them as one Chamber. As I pointed out, the necessary effect of that is to have party machinery in both Chambers, so that the same vote would be recorded. I find so far that no particular purpose has been stated that could be served by the Second Chamber

which the First Chamber would not serve. As I say, this proposition to have a Joint Session straight away really amounts to the proposition that both Houses should be virtually constituted into a single Chamber for all purposes.

The last thing that I want to say, My Lord, is this. Much has been said about the fact that all federal constitutions possess Second Chambers. I do not think it can be said that the experience of Second Chambers in federal constitutions has been as successful or as clear as would justify us in repeating it or as should prevent us from exploring other methods to secure what has been appropriately described in the Report as stability. There are other ways of finding it, and I do not see why we should be hide-bound by precedent. But, speaking on actual experience, I desire to quote the authority of two distinguished German constitutionalists, who have summarised the position in regard to the functions of a Senate in federal States in the following terms:—

> "The institution of a Senate in the constitutions of federal States, as just described, has failed utterly. No State has been successful in constructing a body representing the federal element in a pure and therefore effective manner. The fault lies in the fact that nowhere have the States forming the Federation been entrusted with co-operation in the work of the Central Government. In all cases the Second Chambers have been made directly or indirectly representative of the parties in the States, who are already enabled to send their representatives to the Chamber of Representatives."

I do not want to add to what I have already said, My Lord. I have only pleaded that, while we are open to argument, we feel that a Second Chamber is a luxury, and a very costly luxury, in the case of a poor country like India. That is all I have to say.

Suspension of Gold Payments in the United Kingdom.

Mr. Gandhi: Lord Chancellor, with reference to the very careful statement made by the Secretary of State yesterday, and in view of the whole-hearted support given by Sir Akbar Hydari to the proposals contained in the statement, I feel it to be my duty on behalf of the Congress to state its position.

Every thoughtful Congressman must sympathise with the British Nation in the crisis that has overtaken it; but I would be false to my trust if I did not express my surprise and sorrow over the manner of the action taken in India. I recognise my limitations; my acquaintance with financial matters is of a very elementary type. I must, therefore, leave the merits to the Congress experts for examination. But what pains me is the fact that the decision in India was taken over the heads of the Legislatures, such as they are, and that especially when, in this place, we are expected to contemplate an early establishment of full responsible government. This step taken by the Government of India is a striking and, in my humble opinion, unmistakable proof of the unbending

and unbendable attitude of the Government of India. Evidently, on matters of the most vital importance to the Nation, we are not yet considered fit to be consulted, much less to decide what is good for us. This is a view I must repudiate with all the strength I can command; and, in the circumstances, so far as the Congress is concerned, I am sorry I am unable to give the support which the Secretary of State asks for the measures taken in India.

Head 3 (resumed).

Mr. Gavin Jones: Lord Chancellor, This question of the powers of the Federal Legislature is intimately bound up with representation and the method of selection. If you will permit me, I will refer to and clarify a statement I made in my last speech in regard to indirect election. Lord Peel remarked that the question of indirect election had gone by default. I do not think so. We very carefully considered the matter, and we did not agree to direct election for the Lower Chamber entirely in deference to public opinion. We are very conscious of the strong arguments in favour of, and opposed to, indirect election, and we are very much impressed by the Government of India's Despatch, Sections 133 and 137, in which they very clearly point out the arguments in favour of and against indirect election.

I am not at all sure that if indirect election to the Federal Lower House is adopted, the State Legislatures will not be seriously affected; and also I am not altogether in favour of proportional representation. We entirely agree with what is said in the Government of India's Despatch, namely, that this a matter which should be carefully considered, and in regard to which the judgment of Indian opinion should have great weight.

We did not intend, however, entirely to abandon indirect election in a limited form; and I entirely agree with what Sir Provash Chunder Mitter has said in regard to the representation of the agricultural classes. I do not quite see how those agricultural classes are going to be adequately represented unless rural constituencies elect their members by indirect election. I think the question of the Mukhi system, put forward by the Marquess of Zetland, should be carefully considered; and I am in agreement with Sir Tej Bahadur Sapru in thinking that it is a great pity that the franchise was not taken up directly after the last Round Table Conference. I agree with Sir Provash Chunder Mitter that we should not give our final decision on these matters without examining the facts, and I think it is quite probable it will turn out that a mixed system of election will be the most suitable—indirect from the rural areas and direct from the urban and the special constituencies.

As regards the powers of the Federal Legislature, with all due respect to Dr. Ambedkar, it seems to me that all his arguments and analogies are based on, and refer to a unitary system of government. We all know what Dr. Ambedkar wants, and that is a

unitary system of government in which the popular House should prevail.

Dr. Ambedkar: I do not say that at all; that is a wrong interpretation of my view.

Mr. Gavin Jones: At any rate, Dr. Ambedkar, I think your arguments were not relevant to a Federal Government, and it is a Federal Government that we are endeavouring to create here; and it is the only kind of Government that we can create.

I must say I was very surprised to hear Mr. Iyengar's speech in regard to a unicameral Legislature. That matter was thrashed out at our last Conference, and we finally decided on the bicameral system. I do not know whether Mr. Iyengar would favour the same kind of unicameral government as would be favoured by Sir Akbar Hydari. Sir Akbar Hydari has given way to public opinion in British India in agreeing to a bicameral Legislature, and I think that everyone here would be very well advised to agree to that.

As regards the powers, it is very important to bear in mind what are going to be the functions of our Federal Government. These have been eloquently described by Sir Akbar Hydari. They are mainly the providing of funds for defence and for external affairs, the control of communications between the various States, and the protection of trade, both external trade and trade between the States. Now, these matters are far better entrusted to experienced statesmen who are sent to that Legislature by the legislatures or the governments of the different States. The directly elected representatives will be representatives of the people in the Lower Chamber, and the people are really far more interested in the legislation in the States; for there we will deal with those subjects in which the people are directly interested—namely, land revenue, law and order, and what are called the " nation-building " departments. The larger questions embracing the whole continent must be dealt with by the representatives of the various units federated, and for that reason we are very insistent that the two Houses should be at least equally represented.

I therefore suggest that the most suitable form of government is one to be modelled on the Australian precedent, with modifications; and these are the modifications that I suggest—that all Bills should be introduced in both Houses; and, athough Finance Bills can only be introduced in the Lower House, that the Upper House should have the power to amend them. Sir Tej Bahadur Sapru's proposal is that they should refer them back to the Lower House. In practice, there is very little difference, and I think that, if the Upper House is allowed to amend them, it will be simpler. Then the other modifications will be in reference to a possible deadlock. In the Australian Constitution, the Governor-General has the power to dissolve both Houses simultaneously. I suggest that it is necessary in our case to dissolve only the Lower House, for this reason, that in the Australian Constitution both Houses are directly elected.

As regards the Joint Session, I very strongly support the suggestion made by Mr. Zafrullah Khan, and very ably argued by him, that the decision should be made by a majority of two-thirds of the Members, if both Houses are equally represented, and of three-fifths if all the Members are in the Joint Session. I entirely agree with Lord Lothian about delays being necessary, and I think that the clause dealing with the deadlock should read very much as in the Australian Constitution, with those modifications, so that it would read approximately as follows:—

> "If the Lower House passes any proposed law and the Upper House rejects it, and if after an interval of three months the Lower House in the same session or the next session again passes the same law the Governor-General may dissolve the Lower House. If after such dissolution the Lower House again passes the proposed law, and the Upper House rejects it, the Governor-General may convene a joint sitting of the members of the Upper and the Lower House. The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed or amended by the Lower House, and if the proposed law is affirmed by the three-fifths majority of the total number of the Upper and Lower House, it shall be taken to have been passed by both Houses of Parliament and shall be presented to the Governor-General for the King's assent."

As regards the voting of Supply, I am in favour of clause (iv) (*b*) in your questionnaire; and I support Sir Akbar Hydari in this—that the function of voting Supply shall be shared by both Houses sitting in Joint Session.

If these proposals are adopted, Sir, then, and only then, I think both Houses will have equal powers. There are one or two other provisions which I think should be entered in the Act, which would help the smooth working of Finance Bills and improve the stability of finance:—

> (1) The Executive alone should have the power to introduce Money Bills.
>
> (2) That all Bills of expenditure should be introduced with a statement showing expenditure and proposed sources of revenue.
>
> (3) That both expenditure and taxation, as budgeted in the previous year, shall stand unless amended by the Legislature.

That is all I have to say, Sir.

Dr. Ambedkar: Is it your view, Mr. Gavin Jones, that the Constitutions of South Africa and Australia have defined the relations between the two Houses in the manner in which they have have done because of the fact that they knew that they were drafting a Constitution for a federal form of government?

Mr. Gavin Jones: Yes, certainly.

Dr. Ambedkar: Then why is it that the Canadian Constitution did not lay down any rules regarding the relations of the two Houses?

Sir Muhammad Shafi: Because the general rule is that the relations shall be the same as those of the House of Lords and the House of Commons.

Dr. Ambedkar: But the House of Lords and the House of Commons make a unitary government, not a federal government. I said this has nothing to do with unitary or federal form of government; and, if you will permit me to proceed, I will say that the various Dominions made the relations of the two Chambers in their constitutions what they were as they found them existing between the House of Lords and the House of Commons at the time when they made their constitutions. They were not drafting them either for federal or for unitary. The Canadian Constitution said—

Chairman: You must give Mr. Gavin Jones a chance to speak, Dr. Ambedkar.

Mr. Gavin Jones: All that I would say is that the Australian Constitution is a federal constitution.

Dr. Ambedkar: Certainly.

Mr. Gavin Jones: I will also say that Australia is one of the most democratic countries in the world.

Dr. Ambedkar: I quite agree.

Mr. Gavin Jones: If they found it necessary to have all these safeguards, I think that it is very advisable that we should have them in India.

Dr. Ambedkar: That is another matter. The point is whether Australia made the provision it did in this connection because it wanted a federal constitution. I say that they simply took their relations as they found them in England at the time that they drafted their constitution.

Suspension of Gold Payments in the United Kingdom.

Sir Maneckjee Dadabhoy: I want, with Your Lordship's permission, to refer to the matter which was alluded to by Mahatma Gandhi before I arrived here this afternoon. I am sorry that I was not here and I ask for your forgiveness.

Chairman: You have that at once.

Sir Maneckjee Dadabhoy: I had an appointment, and I was unfortunately detained. From what I have heard of the remarks I cannot permit them to pass unnoticed. Having held the office of Governor of the Imperial Bank of India for the last ten years, since its inception, I cannot allow the remarks made by Mahatma Gandhi, to pass unnoticed. I therefore request Your Lordship's kind permission to say a few words.

I understand that the Mahatma has expressed his personal disapproval, and the disapproval of the Congress, at the action taken by the Government of India, over the head of the Indian Legis-

lature, in connection with the suspension of the Gold Standard, or the selling of gold in India. When I read the intimation of this matter in the London "Times" yesterday morning, I became exceedingly nervous over the situation, I having some intimate knowledge of the financial position in India and the present gold reserves of that country. I was so anxious that immediately we broke up yesterday afternoon I went to the House of Commons, and I also visited the House of Lords, where Your Lordship saw me last night. I was in the House of Lords until twelve o'clock at night to watch the events that were going on.

I must say definitely that the action adopted by Lord Willingdon and the Finance Member of India was the only action that could possibly have been taken in the interests of India. That step was essentially necessary. Not knowing the full circumstances of the history, or the circumstances under which the suspension of the Gold Standard was effected in this country, it was an obligatory duty on the part of the Viceroy and the Finance Member to have taken immediately similar action in that country. The interests of India in financial matters are intimately interwoven with those of Great Britain. Whatever happened in this country would most certainly affect the situation in India.

Moreover, what was the action taken by the Government of India, as far as I have been able to see from this morning's cables? I am happy to say that we have at this juncture a Finance Member in India of exceptional ability, who is in a position to grasp the situation so well. The statement which Sir George Schuster made in the Legislative Council was to the effect that, owing to the action taken in England, the Government of India had come to the conclusion that it was in the interests of India to suspend, by Ordinance, the operation of the Act which was passed in 1927. The Royal Commission on Indian Currency and Finance, of which I had the honour to be a member, recommended the introduction of a Gold Standard Bill; and in 1927 that Bill was passed. I may say that it was just two years after the Gold Standard was reintroduced into this country. The Gold Standard was, during the War, suspended in this country, as everybody is aware, and it was not until 1925 that it was reintroduced. The Hilton Young Commission came to the conclusion that, in India, in order to save and strengthen its financial situation, and to put it on a parity with other international countries, it would be the best step to take to put India upon the Gold Standard. In pursuance of that decision India was put on the Gold Standard. Personally I have been sharing the opinion with many financial experts, both in England and in India, that the Gold Standard has not worked satisfactorily in England on account of various cause. The result, which culminated in the passing of the Bill yesterday, I foresaw some six months ago. It was inevitable. Even some of the Members of both Houses had seen that it was inevitable; and it would be hardly fair to quarrel with the Government of India in the action which they have taken at present.

Sir George Schuster made it absolutely and definitely clear that this was only a temporary measure. He also stated, as far as I am able to see from the report, that he was not in a position to lay before the Assembly the full circumstances of the case. I think that he acted with great caution and prudence in not doing so without fully realising the circumstances under which this action was taken. I have not the slightest doubt that Sir George Schuster, under the guidance of Lord Willingdon, will before long take the entire Assembly into his confidence, and will lay the full position before the Assembly.

This step, to my mind, was an inevitable one, considering our position and considering our gold reserves there. Although I am glad to say that our gold reserves in India are better to-day than they were last year, they are certainly not in a very favourable position. They are certainly far below what they were when the Royal Commission on Indian Currency and Finance recommended the introduction of the Gold Standard. I shall refer to this matter at considerable length when I come to discuss the question of financial Safeguards. At present I shall content myself with saying that, with great respect, I differ from my friend, Mahatma Gandhi; and, with all respect to him, I say that, in my opinion, he could not possibly find fault with the action taken by the Government of India at this juncture.

Head 3 (resumed).

Mr. Jayakar: Lord Chancellor, I do not wish to be long, because, after hearing the elaborate speeches of Sir Muhammad Shafi and Sir Tej Bahadur Sapru, there is very little indeed which I can usefully add to the discussion on this topic. I wish to confine myself to two small questions only: (1), as regards the necessity of having an Upper Chamber; and (2), as regards the necessity of having a two-thirds or three-fifths majority, or even an absolute majority, of the two Houses in passing Bills in a Joint Session. These are the two points on which I want to speak just for a few minutes.

As regards the necessity of an Upper House, I was somewhat surprised to hear the remarks of my friend, Mr. Rangaswami Iyengar, consequent as they were upon the remarks made by Mahatma Gandhi. This is eminently a case, Sir, where one can say that extremes have met—the extremes being the view taken by our esteemed friend, Sir Akbar Hydari, who also requires one Chamber, and the other view taken by the most extreme school of politics, if I may say so without offence, namely, that represented by my friend, Mr. Rangaswami Iyengar. Although they may appear to be alike, when you go deep down to the bottom you find that their views are absolutely apart. The reasons upon which Sir Akbar Hydari based his predilections for one Chamber were these. He says he wants one Chamber, and not two Chambers, because he wants a House as small as possible which will represent the Governments of the Provinces.

Sir Tej Bahadur Sapru: And the States?

Mr. Jayakar: Yes; I think I am quoting fairly the gist of his comments. He said the House he envisages is a small Upper House representing the Governments.

Sir Muhammad Shafi: Only one House?

Mr. Jayakar: One small House representing the Governments of the Provinces.

Sir Tej Bahadur Sapru: And the States?

Mr. Jayakar: Yes. And, as far as Mahatma Gandhi's view is concerned, on which Mr. Rangaswami Iyengar's remarks were based—I am again quoting, and I think I am right in this quotation —he said: "I have no fear of popular legislation. I am prepared to trust it. I do not think it will run away with the bit in its teeth. No control, therefore, of a popular House is necessary." These are the two grounds on which these two views, which would appear to have a seeming affinity, have been put before the Committee. If I may say so, both these views neglect an important principle which is consequent upon federation. Federation, if it is to be at all real, must secure two ends. It must give representation to the citizens of India in their individual capacity and also in their corporate capacity. I think that is an axiomatic truth when you come to look into the requirements of federation. Individual representation means what one may paraphrase as direct election.

Sir Tej Bahadur Sapru: Popular election.

Mr. Jayakar: Or popular election. Representation in their corporate capacity will be through the Councils of the Provinces or through the Indian States' Governments. Unless both these points are secured, the idea of federation will be incomplete. Now I want the Committee to consider this question: Is it possible to combine in one Legislature both these kinds of representation—popular representation, where every citizen of India would have a right to select his own representative for the Legislature; and the Governments of the Provinces and of the Indian States, selecting their own representatives as representatives of the Governments in their corporate capacity? It would be a very interesting political experiment, Sir, if a House could be devised where representatives selected on these two different principles could sit and deliberate. Speaking for myself, I should have no objection to a unicameral Legislature—if this almost impossible experiment could possibly be made—in which both these kinds of representatives could sit.

Coming to the second point, I entirely favour the view which Sir Sayed Sultan Ahmed maintained, and which was also put forward by Sir Tej Bahadur Sapru, that in a Joint Session a bare majority should be sufficient. My reasons for saying so are these. I yield to none, Sir, in my desire that the future constitution of India should be made as stable as possible. I have been a Member of the Central Legislature, and of a Provincial Legislature too, for a few years, and I appreciate quite well—as well as anybody else—

the desirability of having, in our future Legislature, elements of stability, or, to quote the expression used by Sir Muhammad Shafi, which will stabilise the future constitution of India. But I am also careful to see that they must not sterilize the constitution of India. I submit, Sir, for the consideration of my colleagues, that there are enough safeguards in a Dominion Constitution which will secure this element of stability; and, if we are convinced that these safeguards are sufficient for the purpose of ensuring stability, there is no necessity at all to require either the two-thirds or the three-fifths or even an absolute majority, to use a technical expression, meaning thereby the majority of the Members of both Houses put together. None of these things is necessary because enough stability will have been secured if we adopt a Dominion Constitution similar to one to which reference has been made more than once, namely, the Australian Constitution.

The reasons why I say so are these. The first safeguard which we secure is the establishment of the Upper House. That, I submit, Sir, If we come to have a bicameral Legislature, is enough safeguard to begin with. Then the next safeguard will be that whatever Bill passes both Houses will be presented, if we adopt a Dominion Constitution, to the Governor-General. Most of the Constitutions of the Dominions provide that, at that stage, when such a Bill emerging from the Joint Session is presented to the Governor-General for Royal Assent, the Governor-General has the right to do one of three things. He either (1) declares his Assent to the Royal Name's being affixed to it; or (2) he withholds such Assent; or (3) he reserves the Bill which has passed into law for the Royal Pleasure. That is another safeguard which we shall have to adopt if we make our constitution approximate to the constitutions of other Dominions. There is a further power which has been laid down quite clearly in the Canadian and Australian Constitutions: *viz.*, the Governor-General may return the Bill, which has emerged from the Joint Session, to the House which originally passed it, and may transmit for the consideration of that House any amendments which he desires to be adopted. This is a further safeguard. The fifth and last safeguard is that, emerging through all these processes, if the Bill goes further, it is then presented to the King in order that His Royal Assent may be given. I submit, Sir, that these five safeguards are quite sufficient for the purpose of ensuring stability.

Last year, Sir Tej Bahadur Sapru tentatively adumbrated his proposal of a two-thirds majority. I say it was only tentatively adumbrated; it was not adopted. Many people can vouch for my accuracy when I say that public opinion in British India did not receive that proposal with any favour, although that proposal, as then adumbrated, was only with reference to two main matters, namely, changes in the constitution and throwing out the Ministry. Even when the proposal was confined to these two exceptional cases, opinion in British India was not favourably disposed towards the adoption of a two-thirds majority. If we now lay down that every Bill, however unimportant, which does not secure the approval of

both Houses sitting separately must secure a two-thirds or a three-fifths majority in a Joint Session, I have no doubt that British Indian public opinion will not accept such a proposal.

I have another objection to this kind of majority and even to the absolute majority which some constitutions provide. Such majorities have this disadvantage, that they put a premium on absence from the sitting. Knowing, as I do, the working of the Legislature in India, I realise that it is necessary for us to provide some incentive in our constitution so that, in the first place, every Member will make up his mind about the merits of the measures coming before the Legislature; and, in the second place, every such Member will make a point of being present to record his view either for or against it. In view of the state to which public opinion has degenerated in British India, and in view of the lethargy which usually surrounds controversial questions in India, I think it is necessary to make our constitution so that two objects will be secured: (1) that public opinion will be quickened, and (2) that every Member of the Legislature will make it his duty to form his opinion and definitely to express it publicly, and not to sit on the fence. I think it necessary to provide for such a quickening to take place; and if you have a provision, whereby whether Members are present or not to express their views and give their votes for or against a measure makes no difference—which is what an absolute majority generally leads to—I think that, having regard to the peculiar necessities of India it would be a retrograde measure. I would therefore submit that a simple majority should suffice.

Coming to precedents, Sir, I find, speaking generally, that the later constitutions, the more modern ones, have accepted the principle of a bare majority in a Joint Session. The earlier constitutions had either an absolute majority or a two-thirds majority, but I think—and I am fairly accurate in saying so—that later constitutions, like that of South Africa in 1909, have deliberately departed from the principle of an absolute majority and have accepted a bare majority because they found, having regard to the conditions prevailing, that such a step was necessary. If that was so in other Dominions, it is all the more necessary in present-day India; and I submit, therefore, that for all these reasons it is not necessary to have a two-thirds or a three-fifths majority or even an absolute majority for the passing of a Bill in a Joint Session.

Mr. Sastri: I wish to say that, having heard all the speeches which have been made, I see no reason to change my view that a bicameral Legislature would, on the whole, be preferable to a unicameral Legislature. That is my first point. My second point concerns an observation which fell from His Highness The Maharaja of Bikaner. He seemed to make a condition that, in Federal India, there should be no such thing as "direct" taxation, I do not oppose that, but I am not prepared to say that I agree to it either. I have not given full thought to that question, and I think it is premature to expect us on this side to say at once that we accept that condition. It may be a sound proposition on the whole; but,

for the moment, I am not clear in my mind that it would be wise to adopt it. I therefore reserve my right to discuss it later.

H.H. The Maharaja of Bikaner: I did not ask for any condition. The question will be discussed when we take up Federal finance.

Head 1.

Strength and Composition of the Federal Legislature.

The following points for discussion in connection with this Head were drafted by the Chairman:—

(i) *What is to be the total strength of the Lower Chamber?*

(ii) *What is to be the total strength of the Upper Chamber?*

(iii) *On the assumption that all the Indian States accede to the Federation at the start, on what basis is the apportionment of the total number of seats between the States and British India to be made—*

(a) *in the Lower Chamber,*

(b) *in the Upper Chamber?*

(iv) *On the assumption that, at the outset, some States decline to enter the Federation—*

(a) *on what principles is the voting strength of the States in each Chamber to be determined from time to time, until such time as all the States become Units of the Federation?*

(b) *To what minimum extent must be adherence of Indian States be secured in order to justify the initiation of a Federal Constitution?*

(v) *What is to be the apportionment of the British Indian seats between the Provinces* inter se, *and on what principles is it to be based—*

(a) *in the Lower Chamber,*

(b) *in the Upper Chamber?*

H.H. The Maharaja of Bikaner: My Lord Chancellor, I trust that I shall first be permitted to express sincere gratitude, not only on behalf of myself, but, I am sure I can add, on behalf of the Indian States Delegation, and indeed of the States of India, to so many of our distinguished British Indian colleagues—several of whom I have the pleasure and privilege of hailing as my personal friends—for the ready willingness they have expressed to respect in every reasonable manner the sovereignty and Treaties of the States, and for the just recognition of the strength and validity of the claims and special position of the Indian States, as well as of our various difficulties. We are particularly indebted to Sir Tej

Bahadur Sapru, Sir Muhammad Shafi, Sardar Ujjal Singh, Sir Maneckjee Dadabhoy, Sir Sultan Ahmed, Mr. Gavin Jones, Mahatma Gandhi, Sir Provash Chunder Mitter, Diwan Bahadur Ramaswami Mudaliyar and Pandit Malavya. I have kept till the end, as deserving of special mention, the name of the talented and charming representative of the fair and better sex whom we are all so pleased to see amongst us, Mrs. Subbarayan. It is very gratifying that such support and sympathy should have been forthcoming at this meeting from such a representative body of British Indian leaders of different creeds and communities and political schools of thought. What they have stressed as regards the Indian States has made our task all the easier and rendered unnecessary certain observations which we would otherwise have had to make.

I should like, Sir, before proceeding to state the views of the Indian States Delegation generally on the various questions under Head 1, to ask for your indulgence and that of my colleagues, if I take a little time in making certain observations of importance to the States. I must apologise for taking up your time, but I hope and believe that our discussions on this and future occasions will be curtailed if the standpoint of the States is appreciated. It will also, I believe, help to shorten speeches on this side in the future. I seriously considered making such a statement earlier in our deliberations; but, apart from my reluctance to intrude unnecessarily, I had hoped that our close association of last time with our British Indian friends had rendered such a course unnecessary. With, however, some new colleagues—whom we are glad to see amongst us—it was perhaps inevitable that, in regard to some points, we should at some time or other have to traverse more or less over the same ground as we did last year. May I say straight away also that any reasonable and feasible suggestions coming from any responsible British Indian leaders will, of course, receive the fullest consideration of the States Delegation and of the Princes and States; but I would ask some of the speakers we have heard lately to bear in mind that, in view of certain vital considerations, it is not fair to place any one of us in the States Delegation in the unpleasant position of having to say "No" to certain proposals such as those that have been made to us. I need say no more in my own words. No less eminent a leader than Mahatma Gandhi has stated as his opinion that no one has the right to dictate to the States what they should do or what they should not do—a point which I emphasised before expressing the States Delegation's view on the questions under Head 2. As emphasise also by certain British Indian leaders, including Mahatma Gandhi, there must in all matters between British India and the States be a spirit of reasonable give-and-take. Without it, to quote once more from the Mahatma's words, "we shall not be able to come to any definite scheme of Federation, or if we do, we shall ultimately quarrel and break up." Above all, the co-operation of the States must be whole-hearted, which can only be secured by their willing consent and not by dictation or coercion.

My Lord Chancellor, I cannot help thinking that some of the proposals and statements and demands would not have been put forward had there not been a certain lack of knowledge as regards the conditions, sovereign status, Treaties, and rights of States, their relations with the Crown and their internal affairs. I take the liberty of stating that the ideas of some of our colleagues would undergo a considerable change if they came into closer touch with us and were able to acquaint themselves with facts at first hand by visits to our States. And I take this opportunity of cordially extending an invitation to such gentlemen to visit Bikaner as the guests of my State and of myself, and to travel over its length and breadth, preferably on our ships of the desert, the camel. I make bold to predict that, by such visits, their eyes would be opened, and that they would then correctly realise that the relations happily existing between the Rulers and the ruled—the vast majority of the Princes and their governments on the one hand and the subjects of the States on the other—are totally different from what may be their present conception, or as some papers and persons have tried to paint them. May I say also that it was particularly gratifying to us to hear from the lips of Mahatma Gandhi that he knows and feels that the Princes have the interests of their subjects zealously at heart.

In the words of some of those gentlemen who have attempted to prescribe to the States in regard to various matters, it was, I think, admitted that logic and politics do not always go together. Idealistic principles are not always reconcilable with what is attainable. Certain things are obviously not within the range of practical politics, nor in accordance with the sovereignty of the States and the conditions prevailing therein. And it is impossible for the States in all things to accept a uniform practice and procedure with British India, whether in the field of Federation or in other directions—if for no other reasons, at least on the grounds of the diversified conditions amongst the States *inter se*. If impossible conditions are proposed, it is obviously out of the question for the States or the Princes to accept them; and I venture to add that, not only the vast majority of the States, but also the vast majority of the population and subjects of the entire Indian India, will share the same view. Even if we would, we could not possibly accept any impracticable propositions which would not be accepted by the States, and their Rulers and governments, as a body. It therefore follows that the decision in certain matters—and I emphasise the words "certain matters"—must, in the very nature of things, be left primarily, and essentially, and solely, to the individual government of the State concerned, or for the States to settle amongst themselves.

My own personal views in regard to matters such as those of sending representatives from the Bikaner State to the Federal Legislature have already been made clear; and, in view of the conditions happily prevailing in my State, I and my government are in no way opposed to our Legislative Assembly having in some

way or other a voice in the selection of our representatives. Indeed, I welcome that. His Highness of Bhopal has similarly made that point clear. For the rest, and in the natural solution of such problems, time, evolution and the conditions prevailing, and above all public opinion in our States, will be important factors.

Reference has been made to the German and other federal constitutions of States or Dominions, which will not be of much avail to us here. The States do not keep before them the old German or any other constitution. They have, as has been made clear repeatedly from the beginning of our present deliberations and in the past, kept before them the position of the States, which is without its parallel in history. Need it once again be emphasised that we have to evolve a special Federation to meet our unique conditions? In Germany, I believe it is beyond dispute that all the federating German States were sovereign all along. This is not so in regard to India, where the States are already sovereign and autonomous and British India and its Provinces are at present not sovereign. It is upon the sovereignty of the States and their right to exist, as one of the two great entities in India, that the States make their firm stand.

My Lord Chancellor, before we came here last year, it was at one time suggested that the Princes and States should come under the head of the most important of the "minorities" throughout the length and breadth of India. It is, however, on much stronger grounds and claims, and on irrefutable and undisputed constitutional and historic facts, that the States base their claims. They stand on their sovereign status and powers, and on their Treaty and other rights, as already stated. In these circumstances, as has been admitted by some of the critics of the scheme as evolved by us, no other federal constitution can form any precedent or analogy. We have in the past tried to meet British India as far as possible; indeed, some amongst us think that we went too far. We have met you as far as is practicable and safe for the States. We shall continue to do so in every reasonable manner possible. But pray remember that all of us, at the best of times, are of a conservative frame of mind, and that there is already a certain amount of alarm and suspicion which we have to overcome in our States, and that there is a limit beyond which it will be impossible for the States and the Princes to go.

It hardly needs repetition that the States cannot, therefore, be coerced or driven into federation. The Treaties of the States are with the Crown, and they can enter into a federation only through another Treaty with the Crown, on receiving adequate and effective guarantees from the Crown ensuring to the States their existence as one of the two great entities of India, and ensuring the continuance of their sovereignty and their Treaty and other rights except in so far as these may mutually and voluntarily, by agreement between us here, have been delegated to the Crown for the specific purposes of federation, and on the specific understanding that such delegated sovereignty will be shared by the States with British

India equally in the Federation, including—I do not emphasise the word "equally" here—including the Legislature and the Executive.

I have repeatedly been asked whether the States will come into the Federation. My faith in federation remains unaltered; and I consider that federation is the only alternative which will help India at this present juncture. But if I am asked at the present moment to say whether the States will come in, I can only say that I very much hope that that will be so, and that we are going to do our best to secure that very desirable end. So far as the States are concerned, the position can be summed up, as I have repeatedly said in the past, in these terms. The crux of the question to my mind is that, when the Princes and States last year were invited to join a federation, they generally and gladly expressed their willingness to consider the question on terms of equality with British India, and even to make some sacrifices on the conditions mentioned. Provided, therefore, that the remaining principles and details are dealt with as satisfactorily as have the various questions discussed so far—taking on the whole, both the last Session and the present Session—and provided that the Princes, through essential provisions, feel that their future existence, and the sovereignty of their States, big and small, are not threatened, I am as sure to-day, as I was when we met the last time, that the great majority of the States will join the Federation. Otherwise, of course, no Ruler who stands as a trustee of his State and subjects, and the custodian of their rights, will be a free agent to enter the Federation. If we are asked, however, to agree to any proposition which is tantamount to the disruption of the States, big and small, either now or in the future, we can best reply in the words of Sir Austen Chamberlain. I would beg our friends who have criticised the past scheme to bear in mind the words Sir Austen Chamberlain addressed to the League of Nations not so very long ago when faced with proposals detrimental to the solidarity and well-being of the British Empire. He said:—

> "You do not know what you ask us. You are asking nothing less than the disruption of the British Empire. I yield to no one in my devotion to this great League of Nations; but not even for this League of Nations will I destroy that smaller but older League of which my own country was the birth-place and of which it remains the centre."

Great and sincere as is the devotion of the Princes to their Motherland, and ardently as they desire to co-operate with British India in assisting in India's progress towards Dominion Status as an independent, honoured, and equal Member of the British Commonwealth of Nations, and willing as they are even to make reasonable sacrifices in this direction, it will, I am sure, be realised by many of our friends on the other side that it would be both unreasonable and impossible to expect the States to agree to any proposals which would in effect lead to their disappearance and the

loss of their important sovereign rights or the individual entity of their people. Such would be a betrayal of the trust that they have inherited and of the mandate that they have from their brother Princes.

One of the speakers spoke of the States coming in for selfish reasons, whilst it was also stated that the real gain to the Princes from federation was entry into the Federal Executive Government. Ideas differ. Rather it is considered a sacrifice on the part of the States. The two essential conditions precedent to entering the Federation are, as already stated, the safety and integrity of the States, and adequate safeguards or guarantees. But what of the gain to British India in unity, stability, experience, and especially in defence from the martial traditions and the fighting races of which the States can legitimately boast? We were told that certain matters are not for the States to decide but for the Federal Structure Committee. We have been incorrectly told that the Princes have agreed to join the Federation, and that they have agreed to accept interference by British India in certain domestic affairs, if I understood it rightly. To the second point our answer must definitely and inevitably be "No." To the first, it has been abundantly clear that, whilst the Princes and States have expressed their willingness to consider entering the Federation, this is not without qualification, but is based on certain essential conditions. Similarly we have made it clear in the past that the States are not agreeable to accepting common criminal or other laws and legislation.

So far as the representation of the States in the Federal Legislature is concerned, and subject to what I have since stated, may I be permitted to quote the legal language used by Your Lordship last year, namely, that the States' duty will be to deliver their representatives in good order and condition? There has been a talk of divided mandates between the representatives of the States and of British India. There is no question whatsoever of States forming a solid bloc to oppose British India. Most of us on this side have not the slightest doubt that, for the most part, the representatives of the States and British India will vote almost entirely on regional lines. And may I also state that the Upper House need not necessarily be a conservative body as in the India of to-day? It would represent the views of the various governments. The only points of conflict that I can conceive between British India and the Indian States are these:—(1) if there is a proposal to break away from the Empire, which the scheme under consideration for India's being placed on a footing of equality and partnership with other parts of the Commonwealth happily renders it unnecessary to touch on; (2) if the very existence of the States were threatened, or there were any danger to the existence of the States or any desire to encroach upon the Treaty and other sovereign rights of the States, except in so far as may be willingly and mutually agreed upon—on which point too I decline to believe that any serious proposition of that kind can be put forward on the part of the majority of our British Indian friends; (3) there are fiscal and financial matters

regarding which we hope that, by previous fiscal enquiry as well as the discussions which will take place here, all such matters will have been satisfactorily settled before the States enter into the Federation, and on which matters we demand, in fairness to the States, mutual satisfaction on all such points.

May I, in the interests of India, and of the federal scheme which I have so much at heart, express the earnest hope that we shall not hear any more, from any gentleman, of the States being permitted to exist only under certain conditions. I do not think I need say more on that point except that this would involve a violation of the sovereignty of the States by force, and that their Treaties should be torn up, involving also a breach of faith on the part of Great Britain. I decline to believe that the doctrine of Treaties being regarded as "scraps of papers" could ever be accepted by the great majority of the British Indian leaders. I need only say that any such remarks are apt to lead to the forfeiting of the general sympathy of the States and Princes as a body in all matters in which we are desirous that we should work in close harmony and co-operation with our British Indian brethren.

Sir Maneckjee Dadabhoy: Maharaja, as far as I am aware, nobody on this side or in the Committee has alluded to that matter at all.

H.H. The Maharaja of Bikaner: I heard a gentleman say that, if the States wish to exist, they can only do so if they federate—or some words to that effect; but we will pass over that matter.

It will be recalled that when, at the first Plenary Session of the Round Table Conference on the 17th November, 1930, the Princes and States were invited by British India to join a Federation and to visualise an India which will be one single whole—each part of which may be autonomous and may enjoy absolute independence within its borders, regulated by proper relations with the rest—our response was as sincere as it was spontaneous. It was my privilege on that occasion, at the request and on behalf of my brother Princes, to state that, whilst the final answer must obviously depend on the structure of the Government indicated and on other points involved (such, for instance, as certain necessary Safeguards—constitutional and fiscal—which we regard as of vital importance to the protection of the rights and interests of our States and of our people), the Princes would only come into the Federation of their own free-will and on terms which would secure the just rights of their States and subjects. I mentioned two essential and broad conditions upon which the States were ready to consider entering the Federation:—(1) that India retains the British connection as an equal partner in the British Commonwealth of Nations; and (2) that an equitable agreement is reached between all the parties concerned to govern the relations of the two Indias, ensuring for the States their due position in the future constitution as co-equal partners with British India, guaranteeing their Treaties and internal sovereignty, and safeguarding their interests, including those of their subjects, on

terms just and honourable alike to the States and British India. Amongst other important details in this connection I need only invite attention to what I said on that occasion about "Paramountcy," and I will deal later similarly with the important question of the Federal Court. It has thus been made abundantly clear on many occasions that, as the States demand freedom from interference in their own internal affairs, equally do they desire to refrain from interference in the purely domestic affairs of British India, and that the States can only come in on terms of absolute equality with British India—not in a position of subordination or inferiority, but as equal partners in the Federation. I equally clearly stated that any idea of the States desiring to dominate over British India was totally foreign to our thoughts and our plans. On the other hand, it will be generally agreed that we are equally entitled to ask that the States should not be dominated by British India or anyone else, which would be totally opposed to the basic idea of any true federation. At the same time, the States must take care to safeguard that the Federal Executive does not encroach upon the sovereignty and Treaty rights of the States, or interfere in matters, or have a voice in questions, other than those which may specifically and voluntarily and mutually be agreed upon and accepted by the States.

As regards the vote of censure, I made it clear, Sir, last year, on behalf of His Highness of Bhopal and myself—keeping in view the list of Federal subjects as drawn up at present, and subject to a fair and just and equitable settlement of the question of the number of State representative in the two Federal Houses—that the Indian States would, we thought, be perfectly content, as regards the percentage of the majority in throwing out the Federal Government, to leave this point to be settled by British India with the Crown. But, in regard to the Executive, any votes of non-confidence, likely to result in the overthrow of the Federal Government, would obviously be a matter of great importance to the States; and if the States are invited to join the Federation it would be out of the question for them to sit still and to have no voice at all in the overthrow of the Executive and in Governments changing hands repeatedly, as they do in some of the Continental constitutional countries, since they are directly concerned with a sound and stable Government, and with continuity of policy as far as possible in regard to matters of common concern to British India and the States.

At the same time, whilst therefore it is essential that the subjects, or representatives of the States must also in no way be debarred from being members of the Federal Executive Cabinet, I submit that the right standpoint is for such members, while they are Cabinet Ministers, to forget that they represent British India or the States, and not to attempt to look at any question coming before the Federal Government from the purely British Indian or the Indian States' standpoint, but to view all matters coming within their purview from the standpoint of all-India, its

honour and its welfare, and with due regard to the legitimate rights and interests and claims of the two entities.

I would now invite the attention of my colleagues to the mandate which we on this side have received from the Chamber of Princes and the Rulers of the Indian States when the provisional decisions taken at the first Session of this Conference were subjected to a close and prolonged examination by the body which speaks, so far as any corporate body can, for the Princes and States as a whole, namely, the Chamber of Princes. The first resolution passed by the Chamber in March last was as follows:—

> "This Chamber places on record its high appreciation of the single-minded devotion and statesmanlike ability with which the representatives of the States, both Rulers and Ministers, represented the States at the Conference, and supports in principle the scheme outlined at the Round Table Conference, which, while laying the foundations of a greater India, aims at securing to all parties in the country their legitimate cherished rights beyond risk of future encroachment."

The following is the second resolution adopted by the Chamber of Princes, on the motion of His Highness of Dholpur:—

> "This Chamber authorises its representatives further to carry on discussions and negotiations with due regard to the interests of the States and subject to the final confirmation and ratification by the Chamber and each individual State."

I will not touch at length upon certain resolutions passed by the Princes at a meeting of our own which precedes the formal session of the Chamber of Princes, where we design to obviate and aim at obviating as far as possible ventilating in public any differences of opinion amongst ourselves. Even the resolutions passed in the Chamber of Princes are subjected to a thorough scrutiny, though of course all the Princes individually cannot be bound beforehand as to their views on such resolutions. Amongst the resolutions passed by the Princes at their own meeting, a day or so before the Chamber of Princes met and passed the two resolutions I have just quoted, were resolutions which attached importance, naturally, to the sovereignty, internal autonomy and independence of the States being safeguarded, and to an equitable adjustment of fiscal matters. The Princes were asked by the resolution to agree that the representatives of the Chamber of Princes at the Round Table Conference should negotiate, with a view to securing individual representation in both the Federal Chambers for the States enjoying full or practically full powers.

Now, Sir, before coming to the question of qualifications, I should like to say one word about another matter. A reference has been made to there being something like 570, or some other number of States; and I think it has been said that some States, with a revenue of Rs. 20, would also ask for individual representation in the future Federation. I can only say that this again represents

a sad confusion of thought with regard to the position of the States possessing sovereign powers and that of the minor or lesser States, talukdaris, jagirs, etc., in our Indian States territory. As was made clear in my speech in this Committee on December 5th last, on behalf of our Delegation, " the component elements of the Federation would be (1) on the one side, the States, through their representatives, chosen by the governments of their States; and (2) on the other side, British India." One of the important details which no doubt will come up for discussion between the States, under the presidency of the Viceroy—whose friendly offices we feel we can always rely upon—will be to prescribe some test for the claims of States for individual entry into the Federation, and this leads me to deal with the question put to us.

Let me point out to you, Sir, that this is no new question. As anyone acquainted with the history of the States and the institution of the Chamber of Princes will know, this is a case of history repeating itself. Alarms and jealousies were very naturally created some ten or twelve years ago, when we were dealing with the constitution and membership of the Chamber of Princes. Similar alarms have been raised to-day, though from different causes and for different reasons, in regard to the individual entry of the States into the Federal Legislature. In regard to the membership of the Chamber of Princes, the essential qualifying tests prescribed, with the consent of the States and after mature consideration and approval by His Majesty's Government and the Viceroy, are:— (1) Rulers of States who enjoy permanent dynastic salutes of eleven guns or over; and (2) Rulers of States who exercise full, or practically full, internal powers such as, in the opinion of the Viceroy, qualify them for admission to the Chamber of Princes. This, I think, answers the queries put to us; and I would only add that no man in his senses has proposed, or could propose, that small units of Indian States territory, with revenues of Rs. 20, should enter the Federal Constitution individually as sovereign States.

Sir, I am afraid it is a little late; but, if I am not out of order, before concluding my general remarks, I should like to say that I did not deal with the question in the beginning, because I wanted to hear the views of our British Indian friends. But should any special seats be reserved for any important special interests in the constitution, it is my duty to urge the claims of the important Indian mercantile community, known popularly in India as the Marwari community, large numbers of whom come especially from Bikaner and from our next door friendly neighbour, the Jaipur State.

Now, Sir, before giving you the views of the Indian States Delegation on Head 1, I should like to appeal strongly for greater trust and confidence in the States. Trust, as we know, begets trust, and it is only by having confidence in one another that we can make real progress. I think we can fairly claim that the very fact that the Princes agreed to consider British India's invitation to

enter into Federation, and that they are still proceeding with the matter, is a practical proof of their having confidence in all men of reason amongst our British Indian brethren.

Before the last Conference assembled, and long before that, it was freely alleged in certain quarters that the Princes were entering into an unholy conspiracy with the British and Indian Governments in order to hinder the advance of British India towards her legitimate goal. When that libel was, happily, finally disposed last year at this Round Table Conference, other motives were assigned to the willingness of the States to enter into the Federation. I appeal no less for acceptance of the idea that, if the constitution is satisfactorily evolved, and if the States feel safe and confident of their security, in entering the Federation, we shall, in the words of Pandit Madan Mohan Malaviya, have an India united even though divided in certain aspects; and the association of British India and the States leading to as great and abiding and mutually beneficial a co-partnership as was so eloquently pictured by Mahatma Gandhi when visualising a similar partnership between Great Britain and India. This idea I have for years thought of and worked for, and still confidently hope for.

The States Delegation's view in regard to the questions under Head 1 can be very briefly dealt with. I shall not attempt at this stage to make any remarks, though I shall be glad to explain at a later stage, if desired, the reasons for these views.

In the view of the States Delegation, the total strength of the Lower Chamber should be 350 and that of the Upper Chamber 250.

Chairman: Would it be possible for Your Highness to deal with the next question on the assumption that all the Indian States accede to the Federation at the start—on what basis is the apportionment of seats to be made?

H.H. The Maharaja of Bikaner: Yes, I come to that. We, after taking everything into consideration, were originally inclined in India to ask for a little higher number in the Lower House; but, as we are not here to try and secure bargaining points, and so on, we thought we should try and put down what we think is likely to command general acceptance by the States, and in the Lower House we want a representation of $33\frac{1}{3}$ per cent. and British India $66\frac{2}{3}$: and in the Upper House 50/50.

Chairman: Now come to the next question—

> "On the assumption that, at the outset, some States decline to enter the Federation—(*a*) on what principles is the voting strength of the States in each Chamber to be determined from time to time, until such time as all the States become Units of the Federation?"

H.H. The Maharaja of Bikaner: Our idea is that other States entering the Federation—and, of course, there is nothing to debar any State individually entering the Federation (for instance, if I want to enter the Federation, even if other States do not, I can

do so)—that other States entering the Federation should have extra seats, and that it should be clearly laid down that they will make room for the other States that later join the Federation.

Sir Maneckjee Dadabhoy: Some of us did not follow that.

H.H. The Maharaja of Bikaner: That States entering the Federation for the time being have the extra seats, and they will automatically, by provision and rules, make room for other States as they federate.

Sir Maneckjee Dadabhoy: Is that in addition to the 33⅓ per cent.?

H.H. The Maharaja of Bikaner: No; according to the other proportion we agree upon.

Sir Samuel Hoare: May I get that quite clearly in my head?

H.H. The Maharaja of Bikaner: We are asking for 125 seats. Supposing only 75 per cent. of the States enter, then those 75 per cent. should have the proportion of the States' seats allocated in excess of what may be settled for each State individually; and they will reduce their seats as other States come in. The States should have their full proportion in the House.

Sir Samuel Hoare: You mean, then, Your Highness, to put it into a concrete sentence, that in the Upper House, assuming you have your 50 per cent. of the representation, whatever the number of the Princes who have entered, your voting power should be half the voting power of the Assembly?

H.H. The Maharaja of Bikaner: Yes. Of course, that is based on the assumption that, as we hope, a large majority of States will come in.

Sir Samuel Hoare: I also would accept the assumption; but I just wanted to be quite clear what your proposition was.

H.H. The Maharaja of Bikaner: Yes.

Chairman: But supposing, merely for the sake of argument, that you were to have a 100 seats, and they were to have a 100 seats, and that at the beginning you had only 70 coming in, the 70 would have the 100 votes?

H.H. The Maharaja of Bikaner: That was the idea, yes.

Chairman: Now, the next question is this:—

> "To what minimum extent must the adherence of Indian States be secured in order to justify the initiation of a Federal Constitution?"

H.H. The Maharaja of Bikaner: Well, Sir, we discussed this question once, and in consultation with His Highness the Chancellor since then we have come to the conclusion that we would rather deal with this matter at a later stage, if that is possible, because some of us have doubts; but may I first ask a question of you, Sir, to put it the other way round?

Chairman: Certainly.

H.H. The Maharaja of Bikaner: What is meant by that—numbers or population? What is meant exactly by this question? What is the test you are thinking of?

Chairman: May I just tell you. I am, as it were, thinking aloud now, and I am not expressing any view or any decision or anything like that. But, for example—merely for the sake of argument—if only one State, with two square miles and three people and four rupees of revenue came in, obviously that would not do. On the other hand it may be—I am not making any decision—that, in answering that rather difficult question, you might have a number of questions to consider. You might say, " What is the total population of the States? What proportion of that population is coming in? " Then you might say, " What is the total area of the States, and what proportion of that area is coming in? " Then you might say, " What is the revenue of the State? What proportion of that revenue is coming in? " And now I am going to tread upon very delicate ground—that is to say, there may be some States which, although perhaps they have not the same revenue as other States, or the same area, or the same population, have considerable prestige.

H.H. The Maharaja of Bikaner: All that is very important.

Chairman: For example, I have a list of the States which I have been working at last night and this morning, which I will show you later on. I have come to the conclusion, in the table I have got, that of salute States there are 120. Some of those have 21 guns, some 19, and so on; and, with regard to non-salute States, there are 458. Therefore, putting together those four things—I am not saying they are the right things to put together—(1) population, (2) area, (3) revenue, (4) prestige, I am only just thinking how far those would bear upon the consideration of the question. But, by all means, Your Highness, do not answer that question now. It is one that wants consideration.

H.H. The Maharaja of Bikaner: I should like to deal with that: and, if I may, I should like later on, at any time you call upon me, to put forward certain points which have a very direct bearing on the representation of the States. For instance, there is a problem amongst us, not only of the bigger States, but important States in many ways, possessing sovereign rights, which are known, comparatively speaking, as the smaller States—and this is certainly a point of very great importance to the whole Order of Princes and the entire body of States—particularly, of course, to this category of States—which I have to bring forward. And similarly with it are inter-linked the questions of the salutes and the Treaties and all those points. Perhaps, if we may, you would allow us to have a little further discussion amongst ourselves on these points before I answer question (iv).

Mr. Joshi: Just for elucidation; His Highness proposed 33⅓ per cent. and 50 per cent. as the proportions of seats for the States. Does he include the States and the Jagirdaris?

H.H. The Maharaja of Bikaner: It includes the entire territory which is known as Indian States territory, or the other entity in India known as Indian India.

(The Committee adjourned at 4-25 p.m.)

PROCEEDINGS OF THE TWENTY-EIGHTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 23RD SEPTEMBER, 1931, AT 11-0 A.M.

HEAD 1.

Strength and Composition of the Federal Legislature—(continued).

Sir Maneckjee Dadabhoy: My Lord, We all heard, with considerable interest, the speech of His Highness the Maharaja of Bikaner yesterday. I may at once say that we are always prepared to consider his utterances with the reverence which they generally deserve. His Highness is one of the most foremost Princes in India, and an enlightened Ruler who has taken considerable interest in the progress of his own State. He has joined on many occasions in showing his active sympathy and extending his support to the legitimate grievances of Indians. My Lord, I am not a bit surprised at the sentiments to which he gave expression yesterday. The other day, when I was speaking on one of the Heads, I myself warned this Conference that it would be futile for us to ask to interfere with the internal economy or with the internal administration of the Indian States; we should give them an extensive discretion in the matters affecting their own personal interest, and we should allow them to urge as many safeguards as they think proper and necessary for their self-protection before they agree to come into the Federation of India. My Lord, His Highness stated yesterday that the Princes would not agree to any dictation or coercion from the members of the Round Table Conference. I entirely agree with him. If there have been any expressions of dissent here on this side with reference to the powers and the privileges of the Indian States, I assure His Highness that they were made in no carping spirit, in no spirit of antagonism to the Indian States, in no spirit of opposition to Indian Princes, in no spirit of reflection or criticism, or to prevent them coming into the Federation with full liberty and with full consideration of their policy, their measures and their status.

But, my Lord, at the same time, His Highness The Maharaja of Bikaner, with his usual natural shrewdness, will be able to discern that there should be a certain amount of criticism, however unpleasant and unpalatable it may be to the Princes. We have assembled here honestly to represent our views and to put the position of British India before this Conference. There may be occasions when we differ from the Princes in regard to certain matters;

but I trust the Princes will receive our criticism in the friendly spirit in which they are made.

His Highness of Bikaner stated yesterday that all the vital and important question will have to be considered very carefully, and that such matters as finance, numerical strength and representation and so on will require most careful consideration. Their Highnesses have imposed certain conditions which must be accepted before they will consider the question of coming into the Federation of India. If I have rightly understood His Highness The Maharaja of Bikaner, he has insisted on the proposition that only on terms of equality, not only with the British Government, but with British India, will the Princes come into the Federation. So far as equality is concerned—equality in the matter of dignity, equality in the matter of prestige, equality in the matter of the assertion of their rights and privileges and in regard to the part to be played by them in the Federal Legislature—I say there can be no dissent. But, if that equality is to go to the extent of demanding equal representation in the Upper Chamber of the Federal Legislature, I am afraid there will be some opposition, and I am afraid that we on this side may not be prepared to agree to that condition of equality.

His Highness The Maharaja of Bikaner has made it perfectly clear that, in the Upper House, he thinks there should be equality of representation. I heard him say—and he insists—that the strength of representation should be 50/50. Now, so far as the numerical strength of the Upper House is concerned, that is a very difficult matter to discuss and to decide at this stage, particularly as we have not yet settled the communal question and the numerical representation of the Muhammadans in the Upper House—and the number of seats which should be allotted to the Muslims has a direct bearing on the total numerical strength of the House. I may be permitted to say, however, that the claim put forward by the Princes for 50 per cent. representation in the Upper House is not justified either by the area which the Indian States comprise or by the population of those States or by any other consideration. I do not desire to be misunderstood in any way. I have the highest respect for the position and the status of the Princes. I have the highest respect for their methods of administration. But I think they will agree, on further careful consideration of this matter, that it would not be quite reasonable to expect a 50 per cent. representation in the Upper House.

My Lord, what would be the effect of such a scheme? If 50 per cent. representation is given to the Princes, I am afraid it will become a somewhat difficult problem in the matter of adjudication, for the simple reason that, if a 50 per cent. representation is given to the Princes, it means an absolute, untrammelled division of opinion and control in the deliberations of the Upper Chamber. What would be the most important and foremost effect of such a representation? I fear that the Indian States will be in a very large measure controlling the policy of the Upper Chamber. My

Lord, I personally think, though I have the greatest respect for the manner in which the Indian States have carried on in the past and are now carrying on their administrations, I would prefer—and this is my personal opinion—to remain under the benevolent but despotic influence of British bureaucracy to coming under the influence of the untrammelled autocracy of the Princes.

I should not be understood to mean a single word of disparagement to the great Indian States in any way. What I wish to point out is that such a proposal may well be considered somewhat unfair; and, in my opinion, a 40 or 42 per cent. representation of the Princes—I am speaking at present only of the Upper Chamber—would be quite an adequate representation, considering the areas over which they rule, considering the total population which they possess, and considering all other circumstances to which I have given my most careful thought.

Chairman: Have you given your careful consideration to this, Sir Maneckjee? We just want to work this out a little. What did you envisage as the number of the Upper Chamber? What do you envisage as the number?

Sir Maneckjee Dadabhoy: I am in agreement, more or less, with His Highness.

Chairman: What number do you think would be a proper number?

Sir Maneckjee Dadabhoy: 100 to 125.

Chairman: Now, let us take it at 100. Supposing you say 100 in the Upper Chamber, 40 per cent., I take it, would mean 40. Supposing that there are 100 in the Upper Chamber, and the Princes are to have only 40, they may be in a difficulty. I am not arguing their case; I am only making the suggestion that that is not enough to go round in this sort of way. They will say—"We want to attract as many people as we can into this Federation; and, if we have only 40 seats to go round, we may not be able to attract as many as we would like. We want many more than that." That might be worked in this way (I do not say that it is the right thing to do)—let us assume that your proportion of 40 per cent. is right, then, if the Princes wanted to have rather more than 40, have you any objection to increasing the number of the Upper House?

Sir Maneckjee Dadabhoy: None whatever.

Chairman: You have no objection to increasing the number of the Upper House to what?

Sir Maneckjee Dadabhoy: So far as I am able to see from the recommendation of the Simon Commission, the recommendation of the Government of India, and the recommendation of other bodies, there is a general desire that the number should be anything between 100 and 150. If you take up to half the numerical strength of the Lower House, I think that the Princes would have no legitimate ground of complaint.

Chairman: How many do you propose to give them on your most generous estimate? I do not want a percentage; but how many in actual Members do you propose to give them? Are you prepared to say that you will not go beyond 60 Princes in the Upper Chamber?

Sir Maneckjee Dadabhoy: I am at present inclined to take the view, as regards the Upper Chamber, that it ought not to exceed that number. There are arguments which you say are very cogent, but they apply equally in the case of British India. What Your Lordship has said applies equally to British India. In the case of British India, the Upper Chamber is not only to consist of elected Members but some sort of nomination will also have to be provided for as regards the Upper Chamber. I have laid my views before you, and that is what I have said.

Chairman: Might I ask you this. Assume, for the sake of argument, that the number is 150 (I do not say that it is right), and assume that you are going to have nominated members (I am not expressing an opinion upon that)—are your nominated members to be in addition to the 150?

Sir Maneckjee Dadabhoy: No.

Chairman: At whose expense are the nominated members to be put there? Are they to be put there at the expense of British India, or at the expense of the Princes?

Sir Maneckjee Dadabhoy: Certainly at the expense of British India.

I feel certain that the Princes themselves, on a fair consideration of this matter, and after a discussion among themselves, will think that after all British India does not propose to treat them badly. I have great confidence in the wisdom of our Princes. I have great confidence in their good sense and judgment; and after the sympathy and patriotism that they have shown us in the past, and from what I have learned from their speeches at the last Session, I feel certain that Their Highnesses will treat us with generosity and also with consideration.

H.H. The Maharaja of Bikaner: You do not want generosity at our expense, I am sure.

Sir Maneckjee Dadabhoy: No. The proposal which I have made, as I have pointed out, is most reasonable and fair, considering the position of the Indian Princes, considering their population, considering the extent of their area, and considering the other vital interests over which they rule.

As regards the Lower Chamber, whatever may be the numerical strength fixed, I am prepared to concede to the Princes $33\frac{1}{3}$ per cent.

His Highness The Maharaja of Bikaner also stated yesterday that there should be a full settlement of fiscal matters before the States entered Federation. I presume that he only referred to

fiscal matters relative to Federal finance, which we are discussing to-morrow.

H.H. The Maharaja of Bikaner: We were talking generally of matters in which the States will be concerned or affected on the question of federation. We will be discussing those views when that subject comes up.

Sir Maneckjee Dadabhoy: If the question refers only to the position of the Princes in regard to Federal finance, it is a different matter; but if there are other matters unconnected with Federal finance in which the Princes think themselves interested, and they want any special privileges, I am not aware that His Highness has made clear to us what they are, and I will, therefore, not say anything upon the matter.

There is one other matter to which I would like to refer. His Highness yesterday stated also that the States are not going to come into the Federation out of selfish motives. Nobody, so far as I remember, has alluded to any such sinister motives under which the States would propose to come in; but, at the same time, if you will permit me to say so, although we welcome the advent of the States into the Federal Legislature, it cannot altogether be stated that they will not be benefited, and we do not expect them to come into the Federation wholly with disinterested motives. Federation is going to help British India as well as the Indian States. This corporate and joint working is going to facilitate the advancement and elevation of India as a whole. The States also are going to be distinctly profited in many ways. They will be able to control the Customs and other policies of the British Indian legislation in which they are deeply interested and on which the welfare of their own subjects is founded. They have also put forward their claims to share in the Customs duties, though that will now become a Federal question and a part of Federal finance. The indirect benefit to Indian States will be in many ways very extensive. Further, they will remain constantly in touch with British Indian legislation, which is of paramount importance.

My Lord, there are certain other matters connected with this and also with the speech made by His Highness, but I know there are many other speakers, and Your Lordship is very anxious that we should begin a discussion here on another matter. Therefore, I will not dwell on the other questions.

Sir Akbar Hydari: My Lord Chancellor, I shall proceed at once *seriatim* with the order of the questions which you have embodied under Head 1. With regard to sub-heads (i) and (ii), as to the strength of the Upper Chamber, I should like to read the decision that we came to in the last Report of the Federal Structure sub-Committee (page 21, para. 26):—

> "But proceedings simply on the basis that there will be two Chambers, the Upper smaller in size than the Lower, and without any decision as to the relations of one to the other, the balance of opinion was to the effect that the Upper

> Chamber—which might be described as the Senate—of the Federal Legislature should be a small body, of from 100 to 150 members . . ."

The sub-Committee's Report in regard to the size of the Lower Chamber was as follows (page 22, para. 30):—

> " The trend of opinion as to the size of the Lower Chamber was that it should consist of approximately 300 members, thus providing roughly one representative for each million of the inhabitants of India. On the other hand the view was strongly expressed that the requirements of efficiency would not be met if the Chamber were to exceed 200 as a maximum. The sub-Committee as a whole recognise the force of these considerations, and also of the desire for a Chamber of sufficient size to afford a reasonable approach to adequate representation of the population. But since no real approach to this latter ideal could be secured without enlarging the Legislature to an undue extent, the sub-Committee think that, having regard to the great importance which must be attached to efficiency of working, 250 should be adopted as the number of seats to be provided in the Lower Chamber."

That is what was in the Report last year. Lord Chancellor, I have during the present Session of this Committee made it abundantly clear that, for the sake of efficiency, I am in favour of a small House or Houses, and therefore adhere to the conclusions arrived at in the Report of a sub-Committee from which I have just now quoted.

Chairman: Might I just ask you this. Supposing the Chamber were 100, and you had 50/50 representation, you would be satisfied with 50 members?

Sir Akbar Hydari: I will come to that and show you how even 50 seats would be sufficient.

H.H. The Maharaja of Bikaner: May I say that is an individual expression of opinion; it is not made for the Princes.

Sir Akbar Hydari: I have not given it as such; I have said this is my strongly held view. But here again, if our British Indian colleagues all strongly feel that, in view of the increase in population as shown by the Census of 1931, some advance should be made upon these figures, I submit that the number of the Lower House should not be advanced beyond 350, and that then the figure for the Upper House should be not beyond 250. But, as I have already said, Lord Chancellor, I really wish that the figures which we had hammered out at the last Session should remain where they are.

I take this opportunity, Lord Chancellor, once more of repeating —in view of what has fallen from Mr. Gandhi and Mr. Rangaswami Iyengar—that the possibility of a small select unicameral Federal Legislature should be explored. My friend, Mr. Jayakar, expresed surprise yesterday that Mr. Rangaswami Iyengar and I should agree; he thought that we were extremes and that we met

curiously—that it was curious that Mr. Rangaswami Iyengar and I should agree in regard to the advisability of having a unicameral Legislature. And I think it was my honoured friend, Sir Tej Bahadur Sapru, who asked Mr. Iyengar whether the latter agreed to my scheme. I do not know what scheme he referred to. It is true that a scheme for a unicameral Legislature was adumbrated in the Indian States Delegation; but British Indian opinion was supposed to be so adverse to the principle of a unicameral Legislature that it never got beyond the inchoate stage. Now, however, that distinguished leaders of Indian opinion, who have a claim to be considered as the representatives of the great majority of Indian opinion, seem to incline toward a unicameral Legislature, all I ask is that the proposal might be further explored. The reasons why Mr. Rangaswami Iyengar, Mr. Gandhi and I agree in this regard are the same. They are that a comparatively small select unicameral Legislature for the subjects which are to be left to the Federal Legislature will result in economy of money, economy of time and economy of personnel, without necessarily detracting from the democratic character which a bicameral Legislature would have. It is possible that we may disagree on the question of composition; but, in the first place, I am not so sure of that, and in the second, the mere possibility that there may eventually be a disagreement demands further exploration of what I conceive to be a valuable idea which may resolve many of our difficulties.

Sir Tej Bahadur Sapru: May I put a question at this point? When Sir Akbar Hydari talks of a unicameral Legislatures, does he mean that the single Chamber would be entirely an elected Chamber, as contemplated by Mr. Gandhi and Mr. Rangaswami Iyengar, or does he mean a Chamber consisting only of representatives of the States and Governments?

Sir Akbar Hydari: My main object it to keep that Chamber as small as possible. Having in view the fact that the Provincial Legislatures will be entirely democratic, I hold that if the Provincial Legislatures, which would be reflected in their Governments, were to send delegates to this Federal Chamber, it would meet my point. I am perfectly prepared, however, to consider the matter further in the light of any arguments which Mr. Rangaswami Iyengar or Mr. Gandhi or anybody else on that side of the table may bring forward. All I contend is that we should try our best, in view of the subjects with which the Federal Legislature will have to deal, to make it as small as possible, and as select as possible, and with as much administrative experience as possible.

Chairman: Assuming that that is right—I do not express an opinion—should we have to consider very carefully all the Provincial subjects before we came to the Federal subjects?

Sir Akbar Hydari: Yes.

Chairman: It would be important, therefore, to get the Provincial subjects right before we really got on to the Federal subjects; is that right?

Sir Akbar Hydari: Of course, Lord Chancellor, I envisage Provincial autonomy to such an extent that all the subjects are exhausted.

Chairman: How are we going to start that Provincial matter? Are we to look carefully into it here and make the Provincial constitutions water-tight, and on a water-tight Provincial scheme set up the Federal one?

Sir Akbar Hydari: Certainly. I should not allow the Federal Legislature to be seized with any subjects which bear on Provincial autonomy.

Chairman: What I was wondering was whether we should not have to do the Provincial one first?

Sir Akbar Hydari: That is a matter for you, Lord Chancellor.

As to the relative strength, if we are to endow the two Chambers with equal powers, it follows that the proportion as between the States and British India should be the same in both Houses. I would deprecate one Chamber coming to be considered as more the Indian States' Chamber than the other. I want the Indian States and British India to consider that they are equally interested in the work and equally responsible for the reputation of both Houses. I would therefore give the Indian States an equal degree of weightage in both Houses. As to what that amount of weightage should be, that is a matter for adjustment and compromise between us and British India. His Highness The Maharaja of Bikaner yesterday asked that in the Upper House the States should have representation on a 50/50 basis, and in the Lower House on a $33\frac{1}{3}$: $66\frac{2}{3}$ basis. I realise that I cannot ask for representation on a 50/50 basis in both Houses. But I am so keen on both Houses being regarded as equally the concern of British India and the States that I am prepared to moderate, so far as I am concerned, my attitude in respect of one House, if British India will agree to compromise in regard to the other House.

Coming to the next question, you referred yesterday, Lord Chancellor, to the many tests which might be taken into consideration in assessing the relative importance of the States. Population and area seem to my mind important, as also such imponderables as dignity and the amount of what I may call the Federal content. Revenue, however, is, I submit, a somewhat unreliable test, as the basis of the figures of revenue differ so widely in different States. For example, taking the Budget of my own State, it does not include gross railway earnings or the revenue of Crown lands or of alienated lands. In other State Budgets there is not the same exclusion of such receipts.

Chairman: Would you help me in this matter? You have the facts at your fingers' ends. Taking the Chamber of Princes, I have certain figures here, but I am not sure whether they are right or not, because they are only my own figures. Taking the 108 States —I know there are 109 now, because Lord Irwin added another, but we will take the 108 if you do not mind—I understand those

108 States in the Chamber of Princes represent 514,000 square miles, 60 million inhabitants and 42 crores of revenue, and that with regard to the 127 States which are represented by 12 members, they total 74,000 square miles, 8 million inhabitants and 2·89 crores of revenue. Is that about right?

Sir Akbar Hydari: I have not added up the figures on that basis, and I thought the Census figure for the population of the Indian States was nearer 80 millions than 60 millions.

Chairman: 60 millions is for those States which have special representation in the Chamber of Princes.

Sir Akbar Hydari: I have not looked into the figures on that basis. I will give some of my own when I come to that, according to my own classification.

H.H. The Nawab of Bhopal: These are 1921 figures.

Chairman: Yes. The reason I have not the 1931 figures is because some of them are not out. These are for 1921.

Sir Akbar Hydari: That was my difficulty also.

There is not the same exclusion in the Budgets of other States of such receipts, or even a severe exclusion of receipts which would more properly come under non-service Budget heads, like capital and other non-recurring receipts. If, therefore, revenue is to be considered, you will have to examine very carefully the figures of the Budget of each State and what they mean.

It is abundantly clear to us all, I think, that, having regard to their number, it is not possible to give individual representation to all the States. It is obviously impossible to give one seat per State and have equal representation for the smallest and biggest in either of the two Houses.

Chairman: I want you to give me, if you can, a figure with regard to one adjective. You say—and I quite agree with you—that it is impossible to give representation to all States. What do you mean by *all* States? How many are there?

Sir Akbar Hydari: Or even all the 112 States.

Chairman: That is what I mean. It is impossible to give representation even to all the States which are separately represented in the Chamber of Princes?

Sir Akbar Hydari: Yes; because it is equally impossible to concede representation for the smallest and the biggest in either of the two Chambers. That is my view. A line will have to be drawn somewhere unless we are to make the two Houses unwieldy beyond the limits of practical politics, and a grouping of States below that line is inevitable. It is in regard to the principle of grouping that there comes in the valuable element of the Dholpur-Pattani scheme (if I may so call it) with which, of course, so far as it creates a bloc of Indian States against a bloc of British India, I do not agree. This scheme gives, if I have understood it aright, a certain number of permanent seats to each of the larger States and

groups. The return of the representatives of any one State to monopolise the college would be avoided by a system of rotation.

Mr. Jayakar: If Sir Akbar is referring to the Dholpur-Pattani scheme, are we going to have a copy of that scheme circulated in order that we may be able to follow these remarks intelligently?

Sir Akbar Hydari: I do not think a copy of that scheme will be necessary for you to follow my remarks, because I am really illustrating them by figures which I obtained before that scheme was put forward. I am simply adverting to the fact that the Dholpur-Pattani scheme has also tried to solve this question, recognising how, on the one hand, there is a desire for every State to have some sort of individual representation, and, on the other hand, how difficult it is to secure that without making the House unwieldy. I will make it clearer when I come to a concrete illustration.

Let me put my ideas before you on this point in concrete shape. They are, let me emphasise most emphatically, very rough, and only serve to bring out more concretely the elements of the problem —a possible method of approaching it. I think we may take it for granted that, if there are to be two Houses, the representation of the States in the Upper House will at least be equal to their representation in the Lower House. For the sake of argument, taking the lowest figures possible—namely, only 150 for the Lower House —and taking only a representation of 33⅓ per cent. for the States in such a small House, there will be only 50 seats to go round. It is clear that the claim for representation purely on a percentage of population basis would ignore the fact that some States, though comparatively small, have a recognised position, more or less indicated by gun salutes, which cannot be ignored. Taking for granted that all the 21-gun salute States will be represented, these number five, and contain over one-third—to be more accurate, 37·81 per cent.—of the total Indian States' population. Then there are six 19-gun States, which amongst them contain almost 11½ per cent. of the population. These are Kolhapur, Travancore, Indore, Udaipur, Bhopal and Kalat. These must all have seats. Then come the 17-gun States, which are 13 in number, absorbing over 15 per cent. of the population. They are Rewa, Cochin, Bahawalpur, Patiala, Bharatpur, Bikaner, Bundi, Jaipur, Jodhpur, Karauli, Kotah, Tonk, Cutch. These all must have seats. There are thus 24 seats allotted with due regard to all the factors, including dignity, and absorbing 64·24 per cent. of the population—24 seats allotted out of 50 seats.

There remain then a number of States which must be represented in some way, and they can either elect their representatives through the Chamber of Princes or arrange on a territorial basis. If the arrangement is on a territorial basis, some such arrangements as the following might be adopted. I am simply indicating a way in which the problem can be approached, and I am trying to make my illustration concrete. For Assam and Bengal States, 1; for Bihar and Orissa States, 1; Bombay States, 1; Central India States,

2; Punjab States, 1; Rajputana States, 1; Western India States, 3; United Provinces States, 1; Central Provinces States, 1. You will observe that I have allowed for territorial blocs which are already well represented by individual States—for example, Rajputana only gets one. I have followed the reverse process for Western India and Central India, which do not come in for individual representation. You have thus now 24 seats for States of higher dignity and 12 for groups of smaller States. The total is thus 36, leaving 14 for disposal.

It is understood that the five major States all claim special representation, and the other four of these five are prepared to concede a premier position to Hyderabad, but are not inclined to make any concessions to each other. In any case, Hyderabad would be entitled on a population basis to 8, but would be content with 6. These supplementary seats might be arranged somewhat as follows: Hyderabad 5, Mysore 3, Baroda 2, Gwalior 2, and Kashmir 2. That is how the remaining 14 seats go round. You will find that these represent the population covered by the areas, and the votes follow that. I hope that I have made it abundantly clear that, even taking the number at its worst, namely, 50 seats only, it is possible to make them go round.

I will now argue as to why we should really try to limit the number as much as possible. My reasons are these. Not only would a system of grouping ensure that the Federal Legislature, whether unicameral or bicameral, was kept small in numbers, but that, in so far as the States are concerned, the quality of the Members was good. Whereas it would be quite possible for groups of the smaller States to select men of real eminence as their representatives, it would be beyond the resources of each small State to do so. It is extremely probable that, having regard to the nature of the subjects which we propose to make federal, the smaller States, which presumably would be grouped regionally, would have a common interest in Federal questions. Moreover, some system of rotation would provide that each individual State within the group would get a chance at stated periods to send a representative on behalf of the group, so that no one member of the group would be able, for all time, to monopolise that seat. I am so convinced of the necessity of small numbers that, for my part, I should not hesitate to sacrifice one or two seats which would be my right on the basis of area, population, Federal content, and dignity, in order to keep down the numbers of the whole.

I come now to question (iv), which is:—

> "On the assumption that, at the outset, some States decline to enter the Federation—
>
> (*a*) On what principles is the voting strength of the States in each Chamber to be determined from time to time, until such time as all the States become Units of the Federation?

(*b*) To what minimum extent must the adherence of Indian States be secured in order to justify the initiation of a Federal Constitution?"

As regards the first part of the question, I envisage the procedure to be somewhat as follows. From the outset it should be decided what the representation of each State or group of States will be if all the States enter the Federation. The quota of those States who are not at any time members of the Federation should be distributed proportionately among the States who have joined the Federation. The latter would give these additional seats up as the States joined. The question as to which State or States should give up these supplementary seats first may be decided afterwards. For example, they might be given up by rotation, beginning with the State that has the largest quota to give up. This is my answer to that question.

My answer to question (iv) (*b*) is that, if States representing 51 per cent. of the total population under Indian States' rule decide to adhere to the Federation, that should be taken as sufficient to justify the initiation of a Federal constitution. In this connection talking by numbers is misleading. The first five States contain 37·81 per cent. of the total Indian States' population; the next seven, 14·67 per cent. That means that, if the first twelve States in respect of population join the Federation, you will have States representing just over 51 per cent. of the Indian States' population adhering to the new constitution.

Question (v) is not one which concerns Indian States, at least at present.

Chairman: You have given us very clearly your personal views, for which we are all very grateful; but who would decide upon this? Would some Committee of the Princes decide?

Sir Akbar Hydari: Yes, I think so. I am expressing the same views as Mysore.

H.H. The Nawab of Bhopal: I have only to add that we have listened with great interest to what Sir Akbar has said; but I should like to make it definitely clear that the question of the distribution of seats among the States *inter se* is the concern of the States, and it has already been decided that they (namely the States) shall settle this matter amongst themselves as soon as the total number of seats to be allotted to them has been settled. This question does not concern this Conference.

Sir Akbar Hydari: I entirely agree with what His Highness has said—that it does not concern this Conference. I gave this merely as an illustration to show—in reply to the question you put to Sir Maneckjee Dadabhoy—that even 50 seats could be worked in such a way that they would be sufficient to go round.

Sir Mirza Ismail: I am afraid I cannot agree with His Highness of Bhopal; and I think the fact that I do not agree with him here seems to be sufficient justification for the appointment of a special

independent committee to decide this question. It is a very difficult and intricate problem. It is impossible that the States can ever come to any agreement on the subject of the distribution of seats. The easiest and simplest way is to refer it to an independent and impartial committee.

Mr. Iyengar: Have I understood Sir Mirza correctly in considering that this independent and impartial committee will deal with the general allocation of seats in regard to the Upper and Lower Chambers, or only with the very restricted question as to how the seats shall be distributed among the Princes?

Sir Mirza Ismail: You will have to have an extensive grouping of the smaller and the smallest States. It is a very big question —how these various States have to be grouped together, and how many seats are to be allotted to the bigger States. All these questions would have to be gone into very carefully by the committee. Let me emphasise the character of the committee. It should be a perfectly independent committee, on which there should not be a single representative of the Indian States, so that everybody might have the fullest confidence in its recommendations.

Dr. Ambedkar: Will the recommendations of the committee be final?

Sir Mirza Ismail: They would have to be submitted to the Viceroy and by the Viceroy to His Majesty's Government. The decision of His Majesty's Government should be final with regard to this matter. As to those States which do not accept the seats— I mean whatever seats have been allotted to them—it would be open to them to stand out of the Federation. There must be some finality in this matter. I think a tribunal or a committee like that would be in the best possible position to decide a question of so much complexity and difficulty.

H.H. The Nawab of Bhopal: Lord Chancellor, I have spoken in the name of the Chamber of Princes, whatever that may be worth to you.

H.H. The Maharaja of Bikaner: Shall we have an opportunity later, Sir, of dealing with some of these points?

Chairman: Certainly.

H.H. The Maharaja of Bikaner: In the meanwhile, all I need tell you is that yesterday, after my general observations as far as Head 1 was concerned, I was merely voicing the views generally of the Indian States Delegation.

Sir Mirza Ismail: I am speaking not only on behalf of Mysore, but also of the two biggest States in Rajputana—Jaipur and Jodhpur—which I have the honour to represent.

Dr. Shafa'at Ahmad Khan: Lord Chancellor. It is a great handicap to follow an experienced statesman, and I am speaking, therefore, under a sense of disadvantage; but, Sir, as a member of the Committee, I would like to put a few points before this

body. The first point which we have to decide is the total strength of the Lower Chamber. Lord Chancellor, I suggest that the total strength should be 300 Members. I do so because I regard 300 as a reasonable figure which will satisfy the requirements both of Head 1 was concerned, I was merely voicing the views generally efficiency and of representation. We cannot have too large a body, because if the body at the Centre is too large it will not be able to do really good and efficient work.

Sir Tej Bahadur Sapru: You want 300 for the Lower House?

Dr. Shafa'at Ahmad Khan: 300 for the Lower House, yes. If, on the other hand, it is too small, the constituencies will be so large and so unwieldy that it will be quite impossible for the Members to keep in touch with their constituents. There is another reason, Lord Chancellor, why I advocate this number, and it is this. India is a country of long distances, and it is very difficult for a body of, say, 600 or 800 persons—to take figures which have been proposed by some members—to secure the presence of all its Members. It would be difficult for all the Members to attend the Lower House regularly. Moreover, the class from which the Members come is not what I may call a professional class. We have, of course, persons who devote their whole time to political work; but, apart from that, we have a very large number of persons who regard it as their duty to devote some part of their time only to political work, and who cannot therefore attend the meetings of the Assembly regularly if the meetings are too long.

With regard to the Upper Chamber, I think there should be 150 Members. An Upper Chamber should, I think, in all cases be much smaller than the Lower Chamber, because the Upper Chamber will, I believe, do very solid work and very good work if its numbers are kept very small. The Senate of the United States of America has, I believe, 96 Members; in the Upper House of the Union of South Africa there are, I think, only 41 Members; while in Australia the number is also not very large—I do not think more than about 50 altogether.

Dr. Ambedkar: What is the population?

Dr. Shafa'at Ahmad Khan: The population of the United States of America is large enough.

Dr. Ambedkar: Compared with that of India?

Dr. Shafa'at Ahmad Khan: You cannot go by population in every case; but in this case the Senate I propose is certainly bigger than the Senate of the United States of America, which has only 96 Members.

The next point, Lord Chancellor, is the basis on which the apportionment of the number of seats between the States and British India should be made. That is, if I may say so, the crux of the whole problem; and if we decide this question satisfactorily we shall be able to achieve what all of us desire—federation. In considering this question I submit that we must keep certain principles

in view. If we do not keep certain principles in view we are likely to frame proposals for the representation of the British Indian Provinces and for the Indian States on an inconsistent basis. I propose that the basis of apportionment should be population both in the Lower Chamber and in the Upper Chamber, both for the Indian States and for British India. That is my proposal; and I make it because, if we introduce any other principle, I feel it will lead to infinite confusion, complexity and inextricable difficulties in the working of our constitution. We know how difficult it would be to assign seats among the States themselves. We have to take not only the question of population but also it is suggested, such questions as salute, area and so on. Various bases have been suggested. If we try to work out any scheme on the bases suggested from various quarters, it will be found that the number of Members of the two Chambers will become too large and they will be unwieldy; and there will be no finality or complete satisfaction so far as the representation both of British India and of the Indian States is concerned. I submit, therefore, that the population basis is the safest, the soundest, and on the whole the best which could be adopted in considering this question, I therefore suggest that the Indian States should be given representation both in the Lower Chamber and in the Upper Chamber according to population. It is said that, in considering the representation of the States, regard should be had to areas. I do not agree at all with this view. If we have to pay regard to area, let us consider what would happen, for instance, in the case of the Sahara Desert, if we had a Union of Africa. Are we going to give full representation according to area to that large and inhospitable tract? Or take the Gobi Desert. I submit, therefore, that area should not be taken into account.

Then, Sir, it is said that, at least so far as the Upper Chamber is concerned, there ought to be equality of representation of the different Units, and that the Indian States should have 50 per cent. of the seats because, in the United States of America, every State has the same number of Members in the Upper House. I beg to submit, however, that the conditions in the two countries are entirely different. You cannot compare the heterogeneous condition of the Indian States with the absolutely sovereign character of the American States before they joined the Union. Before they joined the Union they were absolutely sovereign in the truest sense of the term, and they came and joined it because they had been told that, so far at least as the Upper House was concerned, they would be given equality. If, in India, the Provinces and States occupied precisely the same position as the American States occupied in 1787, I would certainly say that there might be equality of representation in the Upper House. But what do I find? On the one hand I find the highly efficient and developed Provinces of British India, possessing an organic unity and uniformity, which have the stamp of an all-India character, if I may say so, on them. On the other hand I find levels of cultural, political, economic and administrative development which vary considerably. Unless and

until, therefore, there is complete similarity between the conditions of the two sections of the country, it is very difficult for us to concede that point.

Another argument which has been adduced in certain quarters is that the German Federation before the War also conceded adequate representation to the States; but may I point out that the very principle of the German Federation was inequality. The German Federation was based essentially on the principle of inequality. You had at the top Prussia, and then you had a number of other States possessing votes ranging from six for Bavaria to one for fourteen States. It was because of the inequality that the Federation was brought about.

It is also said that, in the States possessing large areas, there is bound to be expansion of population later on. Well, that can be met, as it has been met in many constitutions, by laying down a provision that after each Census (say, after 10 years) the proportion of the Indian States as well as of the British Provinces, should be increased both in the Lower and in the Upper House.

Sir Muhammad Shafi: Readjusted?

Dr. Shafa'at Ahmad Khan: Readjusted, yes. This is done in Canada every 10 years, in Australia every 10 years, in South Africa also; and I may say that it is provided for in the new German Constitution and other constitutions. So that argument can be met by the successful working of this provision in many other constitutions.

I now come to the next point:

> "On the assumption that, at the outset, some States decline to enter the Federation—(*a*) on what principles is the voting strength in each Chamber to be determined from time to time.....?"

This is a point which has cropped up whenever there have been projects of federation. It is not an entirely new point. This difficulty has been faced by all the framers of constitutions before, if I may say so. I will take up (iv) (*b*), first, with your permission:

> "To what minimum extent must the adherence of Indian States be secured.....?"

I propose that, unless and until at least half of the States, possessing half the population—about 40 millions, that is to say—come in, the initiation of a Federal Constitution cannot be justified.

Sir Muhammad Shafi: 79 millions is the total population.

Chairman: You are in agreement with Sir Akbar. So long as there is 51 per cent. of the population, you say "go ahead."

Dr. Shafa'at Ahmad Khan: Yes; but if other States do not join later on, if 50 per cent. come in, I should give them a voting strength in both the Chambers only according to the amount of their actual representation in the respective Chambers. I would not allow them to exercise all the votes to which they would be

entitled if every one of them joined the Federation. This provision would also simplify the difficult and intricate problem of grouping. So far as this question is concerned, I am not going to enter into it, because I believe it is entirely the concern of the States and that the British Indian representatives have nothing to do with it. The grouping may be effected according to any principle that may be arrived at among the States themselves; but I beg to submit that, if this principle—the principle of population—is followed throughout, then their difficulties also will be greatly simplified and lessened, because they will get representation in the Lower Chamber, say, at the rate of about one Member per million of population, and one per two million in the Upper Chamber. If 50 persons come in in both the Chambers, we can make the necessary readjustments from time to time; but I am not prepared—and I think very few persons on this side are prepared—to give them the votes to which they would be entitled if all of them joined the Federation. The principle in all federations has been that a State should be given the right to vote in either Chamber only if it had joined the federation.

Dr. Shafa'at Ahmad Khan: I now come to the last point. Here again I would apply precisely the same principle—the principle of population—both in the Lower House and in the Upper House. At the present time, the amount of representation enjoyed by various Provinces, both in the Lower Chamber and in the Upper Chamber of the Central Legislature, is not based on any sound lines. Some Provinces have been given a larger representation than others.

Chairman: Then you would rather suggest, for example, that the Central Provinces, which have only 13 millions, if I remember aright, while Bengal, for example, has 46 millions, should only have about one-third of the representation of Bengal?

Dr. Shafa'at Ahmad Khan: It should be done according to population, whatever it may be. The Franchise Committee of 1919 allotted seats to the various Provinces on no principle at all. The three Presidencies—Madras, Bengal and Bombay—were given a disproportionate amount, while the United Provinces and other Provinces were not really given their due share.

Chairman: Would the effect of that be that the Punjab would only have half the number of places that Bengal had?

Dr. Shafa'at Ahmad Khan: I think it would be so.

Chairman: And, for example, the Punjab would only have half the number of Members that Madras had?

Dr. Shafa'at Ahmad Khan: Yes.

Mr. Joshi: Sir, Before I offer any remarks on the particular subjects, I would be permitted to make one or two general observations. In his speech, His Highness The Maharaja of Bikaner yesterday said that some members of this Committee maintained that they had a right to interfere in the domestic affairs of the Indian States. I feel that, so far as I could follow the proceedings

of this Committee, there was not a single member who maintained that he would advocate interference in the domestic affairs of the Indian States. What some of us did maintain was that, if the Princes desired to enter the Federation, the matters which are concerned with that Federation are not domestic affairs of the Indian States—they are matters of common concern, and to that extent the approval of both British India and Indian India is absolutely necessary. If interference in these matters is to be regarded as interference, then we claim that it is a legitimate interference. We feel that the character of the Legislatures in India is not a domestic affair of the Indian States; it is a matter of common concern. And when we claim what the character of the Federal Legislature should be, we claim that we offer no interference in the domestic affairs of the States; and if that is an interference, we again claim that it is a legitimate interference.

May I also say that it was said that there were some members who had imputed selfish motives to the Princes in joining the Indian Federation. Again, Sir, I have not heard any member attribute merely selfish motives to the Princes. I myself referred to this point; and I made it quite clear that the Princes are desirous of entering the Federation both out of consideration for their own interests and out of patriotic motives.

H.H. The Maharaja of Bikaner: I think the words you used were " selfish and patriotic reasons."

Mr. Joshi: I maintain that the Princes are desirous of entering the Federation out of consideration of their own interests, as well as out of patriotic motives. I feel that, if the Princes are entering the Federation only from philanthropic motives, they are not likely to secure the kind of Federation which will be in the interests of the whole of India. I feel that the Federation must serve the interests of British India as well as of Indian India.

Chairman: I rather want to think of India as India; not as British India and Indian India. Let us drop the adjectives.

Mr. Joshi: His Highness made an appeal to the members representing British India to place greater confidence in the representatives of the States. I felt, on account of the unique position which His Highness The Maharaja of Bikaner holds, that his appeal should have been for greater mutual confidence rather than an appeal for greater confidence in the Indian States. It is, I believe, a greater measure of mutual confidence that will lead to the proper settlement of this question, rather than one side putting greater confidence in the other.

I wish now to discuss very briefly the various sub-heads. The first one to which I will refer is the total strength of the two Chambers. My own view is that, the larger the number, the better it is for the representation of the various interests in India. I would roughly suggest that the number should be about 600 for the Lower House. My object in stating this number is that, for the proper representation of the various interests and communities, it is

a better plan to be able to secure multi-Member constituencies of manageable size. I feel that a constituency for an area of manageable size should not include more than an area equal to the average area of two British Indian Districts. A District is a defined term in India. There would be about 125 constituencies. If we are going to have multi-Member constituencies, there should be on an average three, if not four, Members for each constituency. I would have on an average between three and four Members for each constituency, so that we may have, out of this number, a representation of the majority population, a representation of the minority communities, and a representation of the major economic interests. I feel that this arrangement is a much better arrangement if we take a longer view of our needs. Therefore, unless we have a sufficiently large number, approaching 600, we shall not be able to get a multi-Member constituency of a manageable size. For that reason I have suggested the number 600. It is quite possible that, when a committee is appointed, and when we know all the facts as to the number of Provinces, and the method of the representation of the States, we may be able to fix a definite number; but my view is that it cannot be less than 600. I also say that it should not very much exceed 700. I would put the number between 600 and 700.

As regards the Council of State, I would put the number at approaching 400; and making an adjustment of the Provinces, the numbers in the Legislature, and the representation of various interests, might increase that number to 500. I would, therefore, keep the number between 400 and 500. I feel here again that a larger number will facilitate the proper representation of the various communities and interests.

Sir Maneckjee Dadabhoy: At any rate, His Highness The Maharaja of Bikaner will have no grouse if it is 500.

H.H. The Maharaja of Bikaner: I do not know about 500.

Mr. Joshi: Taking it for granted that the election of the Upper House will be by the Members of the Provincial Legislatures, still, if all interests are to be represented, the number of Members to be elected by each Provincial Council must be sufficiently large. Unless that number is large, many interests will go without representation, or we shall have to find methods of representation which will not be satisfactory to those interests. I feel that, if we keep a larger number in view, that will also be convenient for the proper representation of the States. I know that it may be said that it is not our business to discuss how the representation of the States should be effected; but it is open to us to say that, if we keep in view a large number, it will be more convenient for the representation of the States. It is not quite correct to say that it is not the concern of the representatives of British India how the States should be represented. I feel that the settlement of this great issue which is before us depends also to some extent upon how the States are represented. If every State, or the larger number of States, are

to be represented only by one Member, we shall have to consider how the representation which is claimed by the minority communities is likely to be affected. The minority communities have claimed a representation. The Muslim minority especially has claimed a representation of 33⅓ per cent. of the total Federal Legislature. We are not yet told by Their Highnesses whether they propose to reserve any proportion of their representation for, say, the representation of the Muslim interests, or for the representation of the Depressed Classes, or for the representation of Labour. They have not stated anything upon this point. I do not know whether they propose to say anything upon the point; but I feel that, unless there is some fair representation of the different communities and interests within the representation of the States also, there is not going to be a settlement in this Conference at all. For that proper representation of the various interests, even from the quota of the Indian States, what is really necessary is that the number of representatives should be large, and that there should be multi-Member constituencies. It is on that account that I feel that the institution of multi-Member constituencies and the largeness of the number will help in the solution of the most difficult questions which are before us.

I shall now, Sir, take up question (iii)—the basis of the apportionment of the total number of seats between the States and British India. On this point my view is that the seats in the Legislature should be distributed between British India and the Indian states, and even between the Provinces in British India, on the only possible basis—that of population. I feel, Sir, that if all the difficulties that we are likely to meet in this Conference are to be avoided, it is better to accept a principle which will be found by all to be a reasonable principle. Then everybody should accept that principle; and then only will there be a settlement. From that point of view, I feel that there is no better principle than the principle of distributing the representation according to population. Judging by that principle, I feel, Sir, that the proposal made by His Highness The Maharaja of Bikaner is likely to lead to difficulty. He is asking on behalf of the States a representation in the Lower Chamber of 33⅓ per cent. He is asking for a weightage of 10 per cent. over the population basis. In the Upper Chamber he is asking for a 50 per cent. representation. According to population the representation should be 23·8 per cent.; so that, in the Upper Chamber, the States are asking for more than double their representation on the population basis. Whatever may be the feeling of the people who are gathered round this table, I feel that a demand to have a representation more than double the share which is due to that part of the Federation on the basis of population is likely to create difficulty. I therefore feel that the distribution should be merely on the basis of population.

There is, Sir, another justification for that principle. His Highness The Maharaja of Bikaner stated that the States will not agree to any other but an indirect tax. If you now take that as a

basis, and if you consider the contributions from the various Units of the Federation to the Federal Government, you will come to the conclusion that the contributions of the various Units of the Federation to the Federal Government will be in accordance with their population. Sir, I am pointing out that, if the distribution is likely to be based upon the revenue which each Unit brings to the Federal Government, then the basis of population is the only basis that will be arrived at. If the taxation is to be indirect—if the taxes are customs and the salt tax—then the taxes are bound to be contributed on the population basis. Each State will contribute revenue to the Federal Government in proportion to its population, roughly speaking. Judging the question, therefore, on the basis of the contribution made by each Unit to the Federation in revenue, I feel that the population basis will be found to be the only just and fair basis.

Then, Sir, His Highness, on behalf of the States, claims that, whatever be the number of States that join the Federation, those States must get the total quantity of representation which may be allotted to all the States. I did not hear any argument in justification of this claim. I know that His Highness of Bikaner is going to speak later on, and we shall all be very interested to hear any justification of this. I myself feel, Sir, that, so far as I can judge, there is no justification for this claim. If the States were one single unit acting on behalf of all, then I could understand that group saying that any one of them can exercise the vote on behalf of all; but if the States cannot do that, I do not think there can be any justification for the claim that, even if only a few States join, they should get the full quota of representation which is due to the whole of Indian India. I am not, therefore, in favour of the claim made on behalf of the Indian States.

I do not wish to speak much on the question of the division of representation between the different provinces. I again hold there that the fairest way of distributing the representation in the Federal Legislature between the Provinces is on the basis of population. I quite realise that there are some Provinces which may have their representation reduced, while there are some Provinces which may get more representation; but, Sir, if this question is likely to be settled, it must be settled on the basis of justice and fairness. I fully realise that my own Province will lose its representation to a great extent; but I feel that, if my Province wants to join the Federation, it must accept a principle which is fair and which is just.

Mr. Sastri: Has your Province or any British Province a choice?

Mr. Joshi: Well, the Provinces may not have a choice; but, if the Provinces want now to have a Federation, and a Federation of a right kind, of a just and fair kind, they must accept a principle which is a fair principle. I therefore feel that we should accept the principle of distributing the representation between the Provinces of British India on the basis of population.

Sir, before I close I want to say one word as to this. Some of us, who differ from the views of some distinguished leaders in this Committee, are told that we do not face the realities. I do not consider it to be a discredit to be an idealist; but, Sir, I hold that the principles which we enunciate and the proposals which we make are made with a full realisation of the realities of the situation. But there is this difference: some people understand some realities but forget the other realities. When we were asked to face realities, what was meant was that, if we insisted upon certain things, the Federation might not come into existence. I feel, Sir, that if the members who are gathered round this table make proposals and then insist that, unless those proposals are accepted as they stand there will be no Federation, this is not facing realities. This is facing ultimatums; and I hope there will be nobody in this Commitee who will confront us with such ultimatums. We have gathered here to discuss different proposals, and nobody should make us feel that, unless we agree to certain principles, we shall not be facing realities.

(The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.)

Mr. Sastri: Lord Chancellor, May I begin by making one or two general observations? Last year, federation appeared to most of us as the only solution of the difficulties in which India found herself; and every section of those represented here was willing, in order to make federation possible, to meet the views of the other sections and agree to as many modifications of their own pet ideas as might seem necessary for the purpose. I was very happy to hear yesterday that the Maharaja of Bikaner, who represents the Order of the Princes with such great ability, was still an adherent of federation. There could never have been the slightest question on that head; if any single person here drives this coach of federation it is His Highness. Our debt to him is incalculable.

For that reason he appealed to us yesterday—not for the first nor even for the second time—to appreciate the difficulties of the Princes and the governments of the Princes, and to make as large allowances as possible for their special points of view. I believe, Lord Chancellor, that upon this side there has been, in general, no inadequate response to that demand. The difficulties of the Princes are only partially known to us—the rest can be guessed from occasional references that occur in the speeches made by their representatives—and I, for one, am prepared to believe that the task to which the Chancellor of the Chamber of Princes, and those who work with him, have set their hands, is by no means easy. I am willing, therefore, to go very much out of the way, as it were, to meet these very special difficulties.

But there is one point of fact which requires, in my judgment, to be put right in this matter. In speaking about federation and the work of this Committee in India, His Highness of Bikaner and some other members of his Order have constantly said that we

on this side requested them to enter into a scheme of federation and that they willingly agreed to meet our request. This statement has been so often made—and it was made again by His Highness yesterday—that it acquires some little importance; for it is made the basis of a request, often repeated, that we on the British Indian side should therefore, for the reason that we were the initiators of this idea, make it easy for the Princes to come in.

My Lord, that is only a correct representation of what took place at the final stage when we met here last year. The real fact is that British India alone was concerned in the political agitation that led to the summoning of this Conference. We always thought that it was British India that was going to have Dominion Status; and for my own part, as you all remember, I admitted that I was a slow convert to the federation idea.

Lord Chancellor, if I may lift the veil somewhat from the proceedings that went on in my own heart, I became such a convert because of the blandishments of His Highness of Bikaner and others here. I listened to him and to other representatives of the Order, and especially the able and talented Secretariat that have been carrying on propaganda on behalf of federation. It is therefore the Princes that started the idea of federation—it is the Princes who drew us in—and it would not be too much to ask, therefore, that from the Princes some consideration is due to us for the difficulties of the British Indian side; and that, instead of all the demands proceeding from one side and the concessions from the other, sometimes we might also make requests of Their Highnesses, and they should be willing to listen to our difficulties.

H.H. The Maharaja of Bikaner: Reasonable give and take.

Mr. Sastri: Now, His Highness yesterday mentioned the figure of 250 as perhaps the safest and soundest figure for the Upper Chamber. We all thought last year of a much smaller figure. I remember His Highness of Bikaner always foresaw that pressure would be brought to bear from one side and another and that the number would have to be increased. I admire his prescience in this as in other matters; but His Highness did not make it clear to us how he arrived at the figure of 250. Apparently, 125 is the figure to be set apart for the representation of the Princes in the Upper Chamber, and thus he arrives at a total of 250, because he gose in for the 50/50 basis. Now, how is the 125 arrived at? His Highness again was silent on the point; but I gather that one of their difficulties is that those Princes and States which are, in their own right, members of the Chamber of Princes, desire that they should have at least one Member to represent them in the Upper Chamber, and that, as that number exceeds 100 by a small figure, we have to provide for 125. I think that roughly represents the process of reasoning by which that figure is arrived at. I sympathise very much with that idea. It is impossible, when certain Princes find places in the Chamber in their own right, to go and tell them that they should come into a Federation in

favour of which they part with some of their sovereign rights, but that, neither in the Upper nor in the Lower Chamber, will these weighty and considerable Princes—some of them at least—find representation.

I am willing, therefore, that we should take the figure so far as the Princes are concerned, up to 125. Then what follows? I part company with His Highness as to the 50/50 basis. I adhere still to the proportion which I mentioned last year—40 to 60. In that case the figure in the Upper Chamber would be much larger than 250; possibly it would be something like 350 or 375. And if that is the case, as in this country, we shall have the two Chambers nearly equally large numerically. For the Lower Chamber our idea roughly is that there should be one representative to each million of India's population; and as it would be impossible to keep it rigidly at that figure, we must have some higher figure. Four hundred, I should think, would be the least that would satisfy the demands of the situation. Mr. Joshi apprehends, not without reason, that under pressure from the various interests and communities that ask for special representation—and not only for special representation but for special representation with weightage—it will be necessary to bring the figure to somewhere in the neighbourhood of 600. I do not know; but it is much easier to increase the figure, I am sure, than it is to keep it within bounds. However, about 350 for the Upper and 400 for the Lower appear to me at present to be the figures that we may take as our starting point.

There is one other matter of importance to which it appears to me that I had better draw the attention of the Committee at once. An idea has been put forward, in answer to one of the sub-heads of your questionnaire, that the States which initially come in, although only a fraction of the total number of States, should get all the representation that we assign to the States as a whole until such time as other States come in, when, by prescribed rotation, seats should be surrendered by those that enjoy extra representation. I still do not understand the principle upon which this arrangement is proposed. I have heard in regard to physical nature that nature abhors a vacuum. Is it also to be understood that, if certain States should not come in, their seats should not lie vacant for them until they come in, but that somebody should snap them up? Let me take Mysore as an instance of a State that chooses to stay out for a time. I take Mysore as an example because it seems to me the least probable. Supposing Mysore had two seats under our scheme, and it did not come in, say, for two years, is it more in the nature of things that the adjoining Presidencies of Madras and Bombay should get that representation, or that Jaipur and Jhodpur and Kashmir should claim it? Is it to be understood that, as between the Indian States, there is some subtle bond which makes them the residuary legatees of each other? I cannot see why this is put forward. On the other hand, I heard His Highness of Bikaner himself say yesterday that, as he foresaw

the working of our Legislature in the future, there could be regional bonds created rather than bonds upon the question of whether it was British India or Indian India. If that is the case, it is much more natural for these vacant seats to be given to neighbouring British India than to other Indian States. But I am not asking for that; I am only asking that the seats which remain vacant should remain warm for those States to which they naturally belong. I cannot see how States, for instance, like Kashmir or Jodhpur should, relatively to British India, relatively to Mysore, relatively to Madras and Bombay, not only start with an additional representation due to weightage, but, furthermore, receive an accession of strength by reason of some other States standing out for the time. It seems to me that that is an arrangement for which very little justification can be pleaded.

There is another point to which I would like to draw the attention of the Committee. My friend, Dr. Shafa'at Ahmad Khan, and Mr. Joshi to some extent following him, have pleaded that, in both Houses, the representation should be determined according to the population of the Units represented. Now, My Lord, if we were speaking of a homogeneous India, that arrangement would work very well; but India is not homogeneous politically or racially or by any other criterion that we may think of. It is not possible to apply any one principle rigidly and without qualifications. Population is perhaps, on the whole, a most just and sound factor to be taken into consideration; but other factors have also to be taken into consideration. So that, when we distribute the seats between British India and the Indian States, it is not possible to confine ourselves solely to this criterion. I go further and say that, even as between the Provinces of British India, it will not be possible to carry this test too rigidly into our arrangements. I was a member of the Franchise Committee which settled the proportions in the various Legislatures last time, in the year 1920. As we went round and enquired, we found very different considerations brought to bear upon our work: population, area, prestige, representation hitherto enjoyed, the enterprise and wealth of the populations, and so on, and so on. I do not believe that any Franchise Committee that we may appoint in future will be able to reject all these considerations, and confine itself to this criterion of population alone. We must be prepared to accept various relaxations of this principle, however sound it may appear to be, and however just and equitable it may appear to be, and to abide by arrangements which an impartial and influential committee, to be appointed hereafter, may determine. I do not think that we are going, round this table, to settle this problem altogether.

There is one thing to which this last observation naturally leads. Their Highnesses will allow me for a moment to refer to this question of the distribution of the Indian India quota among the various States. This subject is so important that, although I am unwilling, I feel almost compelled to make one observation. The Indian States, as has been repeatedly pointed out, include a very

large number of unimportant entities which have been included in the list. His Highness The Maharaja of Bikaner has pointed out repeatedly that we on this side are wrong to mention the figure of 570 to 600. He says that this large figure is mentioned merely to frighten everybody. That may be the case; but in all his statements I have never yet met with his own figure. What are the criteria according to which he would exclude some of this large number which any Government of India list gives us; and, so excluding them, what is the residual figure that he gives? No one has made a pronouncement upon this subject hitherto, and I should very much like that matter thrashed out a little more so that we can see the magnitude of the problem. I am mentioning this only to show that, while we are all agreed upon general considerations, no one (not even His Highness The Maharaja of Bikaner, whose knowledge of this matter is unrivalled) is able to give us a satisfactory solution. The satisfactory solution is very difficult to arrive at. Already this morning the representative of one of the very important States in India, not included in the Chamber of Princes, has definitely told us that the distribution of seats as between the Princes is so difficult a matter that it could not be left to the Chamber of Princes, or to any of its representatives, but it should be referred to an impartial Committee. Machinery of that kind it may be necessary to devise; and, from this side of the table, I wish to make an appeal to Their Highnesses to take the lead in this matter. Do not consider that, in giving advice, or in making a suggestion, we are overstepping the bounds of propriety. Your Lordship is never tired, when we speak of this subject, of reminding us that we must think of India as a whole, and not of this section or of that section of India. The distribution of seats among the Indian States is a matter upon whose settlement so much depends for the safe working of our federal machinery. I would, therefore, beg Their Highnesses to take Sir M. Ismail's suggestion into very earnest consideration, and, if possible, to arrive at some solution of the problem which will embrace not only that part of the Indian States which are represented in the Chamber, but those others also which, either by their own act, or by the arrangements under which the Chamber is constituted, do not yet play a part in the deliberations of that Chamber.

Sir Samuel Hoare : Mr. Sastri has explained eloquently, as he always does, the process of conversion through which we all went last autumn. He has told us how the words of His Highness The Maharaja of Bikaner converted us all to the idea of all-India Federation. I went through the same process as Mr. Sastri; and I should like to say—and this is my first observation—that I am just as anxious to see an effective all-India Federation brought into being as I was last autumn when His Highness The Maharaja of Bikaner and his Princely colleagues first made the proposal to the Conference. When I say " an effective all-India Federation," I mean a Federation that is based, first of all, upon a definitely federal foundation; and I mean, secondly, a Federation with defi-

nitely federal organs to carry out its duties. I do not now wish to go into details upon these two main conditions. During the course of our discussions we shall have ample opportunity of discussing the details that arise in connection with them. To-day I would only say in a sentence, taking up in particular the point of view expressed by the Princes this morning, that I do regard as one of the conditions of an effective all-India Federation a sufficient participation of the Princes. Here and now I do not want to be drawn into a controversy about numbers. I would much rather hear the views of gentlemen around the table upon that very important point; but I should like to make it clear that, so far as my own views are concerned, I do really regard an effective participation of the Princes at a reasonably early date as one of the basic conditions of the constitution that we are discussing.

When, Lord Sankey, I come to the further questions of detail that have been discussed this morning—what that percentage should be, what numbers of seats the Princes should have in both the Chambers—I would much rather not to-day state my view as definitely made up upon either one or the other. I do quite honestly wish to hear the views of gentlemen around the table, and I do most sincerely wish to see agreement reached between the various sections of Indian opinion gathered together around this table. If I might make nothing more than an *obiter dictum* to-day, I would venture to say that it seems to me personally that the 51 per cent. of the population, the test suggested by Sir Akbar Hydari, is not a very full representation of the Princes. I do not wish to say more than that to-day.

Then, when it comes to the numbers, here again I would very much like to hear further discussion around the table from representatives of various bodies of Indian opinion. Let me only say at this stage that, speaking for myself, I am genuinely nervous of making these two Chambers too big. I do not say that for any partisan, political reasons. I do say it because I do believe that the kind of Chambers that we want are Chambers of a manageable size, that can effectively carry out the explicit Federal duties that we are assigning to them. And therefore, if I may say so at this stage, I somewhat regretted the tendency that has shown itself to-day—exhibited even in Mr. Sastri's very interesting speech—of putting these numbers higher and higher; but at this stage I would not say more than that single word of caution.

Then there was another detail, a very important detail, that was raised this morning, namely this. Supposing a large number of Princes do not enter the Federation at once, what is to be their voting power until the full number enters? I understood Mr. Sastri to say that he thought that the voting power should be strictly proportionate to the number of Princes actually in the Assembly at a given time. Now, that sounds all very well from a logical point of view, but we must remember this, that in creating this Federation we are bringing together two separate interests, and I myself can quite believe that the Princes would say them-

selves that they really would be placing themselves at an unfair disadvantage if they entered the Federation, even though it be in comparatively small numbers, without having an effective voting power. I venture, therefore, just to throw that out in the discussion as a word of general caution.

Then, my Lord Chancellor, my last observation here is this. In all these questions, I was very much struck by the concluding observation of Mr. Joshi this morning. Mr. Joshi stated his view very clearly and very ably, but he said quite definitely at the end that these are not matters for ultimatums from one side or the other; and the last thing in the world that I wish to do—and I believe here I am speaking for all my British colleagues—is to lay down hard and fast conditions at this stage in our discussion as to the various details that we have been considering this morning.

I venture to make this intervention at this time, and perhaps I may end it by saying this word of apology. My attendances at the Committee have not been as continuous as I should have wished. I have been called out constantly upon very urgent business connected with the Cabinet. But I can assure my colleagues that I have read, I think, every word that they have said; and, so far as I can, I am following all the arguments that they are urging upon the Committee.

Sir Provash Chunder Mitter : Sir, I will take up the first and second sub-heads first. In coming to a decision as to the numbers in the Lower and Upper Chambers I venture to think we should take the following points into our consideration; namely, facility of providing adequate representation, the expense, and the ability to find men in sufficient numbers who can go from the distant parts of the Indian continent to Delhi or Simla. Then, if we have to find sufficient men of ability and probity, the question of payment of salaries or subsistence allowances and travelling expenses will have to be considered. Then, lastly, there is the very important consideration, namely, that too large a number may render it difficult to transact business quickly and efficiently.

With regard to the first point, Sir, namely, facility of representation, it is patent that, in a vast country like ours, with the varied interests which the Federal Legislature will have to represent, a large number is very attractive. Therefore I find, on the one side, His Highness of Bikaner willing to go to a figure which is larger than that for which some representatives pleaded last year. On the other side, we find Mr. Joshi would go to as high a figure as 600 or 700. Well, that is no doubt a very important factor, namely, facility of representation; but, as I have said, that is not the only factor. If we can give adequate and suitable representation without making the strength of either House too large, I think in the beginning we should try to do so. Our aim should be to come to a decision after taking into consideration these various factors, which, I venture to say, are all relevant.

Then, Sir, the question of expense is a matter which we cannot ignore. The larger the House the more expensive it must be.

Then, ability to find men in sufficient numbers, who are willing to go to Delhi or Simla, is a point which cannot be ignored. I, for one, think there are any number of able men amongst Indians who can adequately fill the position of a Member of either Chamber. At the same time, we know that our men are generally poor. At the same time, I know that many of our best men are not inclined to enter the lists for the polls. It may be unsatisfactory, but there are very many good men, not only in my country, but I venture to think in other countries—perhaps in yours—to whom a political life does not appeal. But we want ability; we are starting on a new experiment. We want our best men; and we want our best men to come, not as you want in this country, a comparatively easy distance to London. You can approach your Westminster very quickly from any part of your country; but take my friend Diwan Bahadur Ramaswami Mudaliyar—he has to travel for perhaps three or four days in order to arrive at Simla. Look at the difficulties of distance. Therefore that is also a factor which cannot be ignored, and mere numbers will not help us. We want numbers undoubtedly, but we want our ablest and best men who are willing to enter the lists by going through the difficulties of an election.

Sir, I mention payment of Members for this reason. I personally am opposed to payment of Members; but there are many men who are able, but who may not find it possible to keep themselves at Delhi and Simla unless you pay them. If you do not pay Members, then you rule out a number of possible candidates. If you do not aim at making the number too high—if you do not have 600 or 700, but if you would aim at something like 300 or 400 in your Lower House—I think it will be easier to get the men without paying your Members. Therefore, that is a point which we cannot ignore.

After these preliminary observations, I will venture to suggest what, in my opinion, should be the strength of the Lower Chamber and what should be the strength of the Upper Chamber. I think that 150, the figure that was mentioned last year, may not be enough for the Upper Chamber. His Highness of Bikaner suggested 250 for the Upper Chamber. Mr. Sastri has given very cogent reasons for suggesting say about 400 for the Upper Chamber. I venture to differ from both of them.

Mr. Jayakar : 350 for the Upper House.

Sir Provash Chunder Mitter : Never mind; I will take it as 350. 350 in my opinion is too much, and even 250 is too much for the Upper Chamber. I suggest frankly, as a compromise, not more than 200; and I should prefer 175. But the actual number, in my opinion, should be finally decided by His Majesty's Government after a committee has investigated the matter. His Majesty's Government has got the views of the representatives in this Committee. They can find out—they will find out—what are the various views of the different representatives. Ultimately, the decision is theirs and must be theirs. The object of a committee

or of a Round Table Conference is to place before them the various view-points; but a committee specially appointed for the purpose of setting important matters as to what the constituencies are going to be, how the number of members is to be allotted to different Provinces, and as between Indian India and British India, will throw further light on this. Therefore, I suggest it should be something between 175 and 200.

Then, with regard to the Lower Chamber, again partly as a matter of compromise between these conflicting standpoints, I say that it should be about 325, but certainly not more than 350. I would prefer 325.

Sir, I will next proceed to the next sub-head, namely:—

> " (iii) On the assumption that all the Indian States accede to the Federation at the start, on what basis is the apportionment of the total number of seats between the States and British India to be made—(*a*) in the Lower Chamber, (*b*) in the Upper Chamber? "

His Highness has asked for 33⅓ per cent. in the Lower Chamber, which is one-third. In reading the Proceedings of last year, I found that some people wanted to allow them seats on a population basis. In a question of this character there are, in my humble opinion, reasons why we should try to defer as much as we can to the views of Their Highnesses, but consistently with the interests of British India. I have heard nothing either upon this side of the table, including Mr. Joshi, or anything on the other side, including His Highness, which savours of the nature of an ultimatum, although both sides sometimes refer to that word. Standing outside that controversy, I do not think that any ultimatum was offered by one side to the other.

H.H. The Maharaja of Bikaner: Not by us.

Sir Provash Chunder Mitter: Nor, if I may say so, by Mr. Joshi. If Mr. Joshi pressed his belief with enthusiasm, then he was merely doing his duty; but I do not think that Mr. Joshi ever said—" Unless we have so much representation there will be no Federation." Therefore, as on both sides we are proceeding on the basis of a give-and-take, there are certain factors which, I think, from the point of view of the good of India, we should take into consideration. Those factors, to my mind, are as follows. Their Highnesses can produce men of administrative experience. It is for the good of India that there should be men with administrative experience in the Federal Legislature. That is a factor which, apart from party considerations, we should not ignore. Then there is the other factor, that representative government is a matter with which we in British India are more familiar than Their Highnesses are. It is true that some of them have started Advisory Councils, but certainly they have not the same experience that we in British India have. Is it strange that they feel some diffidence in entering into a new form of government and a new form of administration?

It would be to the good of India to give some difference to their views, and to give them a little more than the population basis, which *primâ facie* ought to be the correct basis. From the point of view of the good of India we should defer to their wishes and give them a little more.

There is another point which I might mention. In the past, I do not think that they got the full benefit of some of the items of taxation. Referring to page 172 of the Nind Report I find, taking, Customs as an item, that the Report gives the States' share as less than one-eighth of the amount collected in that year. They might have got from the expense of Defence the benefit thereof: but they did not get a benefit out of the Customs duty or the Salt duty to the same extent as British India did. Therefore, from that point of view too, we may allow them a little more representation. These figures in the Nind Report show that their subjects, generally speaking, are poorer than the British Indian subjects.

Mr. Joshi : These things are admitted.

Sir Provash Chunder Mitter : I am giving my opinion upon materials and facts. It does not matter, as far as I am concerned, whether they are admitted or denied. What are the subjects that are likely to come up in the future constitution? The levying of Customs duties is an important matter, and it is a matter of all-India concern. If, by the weight of numbers, we do a certain thing with regard to the constitution, then, even if they get 50 per cent. in the Upper House and 33⅓ per cent. in the Lower House, they cannot stop it. Therefore my point is that, if they are apprehensive, their apprehension is not absolutely without reason. But I began by saying that we must look to the interests of British India as well, and, looking to the interests of British India, I would appeal to Their Highnesses that in the Lower House they should not claim anything more than 30 per cent. In the Upper House there is a difference of opinion between 40 per cent. and 50 per cent. I think that the difference is not so great that it cannot be adjusted by give-and-take. I will not mention the figure.

The next question is:—

> "On the assumption that, at the outset, some States decline to enter the Federation—
>
> (*a*) On what principles is the voting strength of the States in each Chamber to be determined from time to time, until such time as all the States become Units of the Federation?
>
> (*b*) To what minimum extent must the adherence of Indian States be secured in order to justify the initiation of a Federal Constitution? "

On this head I agree generally with the observations of Mr. Sastri. I say further that, if 50 millions of the representative population of the Indian States agree, I think that we ought to enter into

federation; but even if it be not 50 millions but something less, say 45 millions, I would not object. Here I would again appeal to Their Highnesses that it is not fair that, if a smaller number should join the Federation, they should claim the whole representation. There is also another aspect. If they get the whole representation there will be less incentive for those who stand out to join. On the other hand, if those who stand out find that, by joining, they can get more representation, and they can get their voices heard, then they are likely to join. In any view of the matter, it is not fair that, because a smaller number join, the remaining seats should be allocated to those who have joined. Mr. Sastri has given very adequately other reasons, and I adopt those reasons.

The next question is:—

> "What is to be the apportionment of the British Indian seats between the Provinces *inter se*, and on what principles is it to be based—
>
> (*a*) in the Lower Chamber,
>
> (*b*) in the Upper Chamber?"

I am of opinion that population basis is the soundest basis. *It is* true that my friend, Mr. Sastri (for whose opinion not only I and every one in this room, but every one throughout the length and breadth of India, has the very highest respect) gave a different opinion. He referred to his experience on the Franchise Committee of which he was such a distinguished member; but when the Montagu-Chelmsford Report was being considered, and the Government of India Act of 1919 was being considered, the position was different, and the problem was different. There was no question of responsible government in the Centre at that time. There was no question even of responsible government in the Provinces at that time. Our present question is not merely responsible government in the Centre but responsible federal government. Now, on subjects affecting a responsible federal government, population plays a large part. How can you allocate how much of the 52 crores realised in the year 1928-1929 as Customs revenue was the contribution of each Province? If you proceed on a population basis you proceed on a sound basis. It may be that there may be differences—it may be that the people of one Province are richer and the people of another Province are poorer; but the aim of the future Federal Parliament will be to equalise the wealth of all the Provinces. From that point of view, the population basis is a sound basis. It may be that one Province may gain and another Province may lose, but you thereby proceed on a principle; and when you are determining the future constitution of a country like India, the less you depart from principles the better for it. Therefore I suggest that it should be on a population basis. But I realise that politics are not wholly logic. It may be that an important Province like Bombay, where the population is comparatively small, may have something to say. Therefore I should

be prepared to come to some compromise in suitable cases; but that will merely be for the transition period, for the intermediate stage. For example, Bombay's population is 19 millions and the population of the United Provinces is 45 millions.

Chairman : Bengal 46 millions, United Provinces 45 millions, Madras 42 millions, Bihar and Orissa 34 millions, Punjab 20 millions, Bombay 19 millions, Central Provinces 13 millions. Population is not the safe guide always.

Sir Provash Chunder Mitter : Population does play an important part; but in order that there may not be too wide a departure from existing practice, I am quite willing to take into account other factors—for example, the importance of Bombay. Bombay, on the basis of 19 millions, may get less than half what Bengal or the United Provinces get. I am quite willing to give them more; but proceed on the population basis, deviate when necessary for some definite and cogent reason, and on the population basis you are not likely to go wrong. Madras is a very important Province, too. Bengal also is a very important Province. Bihar and Orissa, considering its importance, is not badly placed; but in the division you must give something to those who suffer most on too strict adherence to the population basis, but that only for the transition period. After we have got full self-government, full responsible government on a Federal basis, say twenty years hence or fifteen years hence—I do not know when—or it may be 100 years hence, though I hope not—then let it be wholly on a population basis. Therefore I would strongly urge a population basis.

Mr. Zafrullah Khan : Lord Chancellor, With your permission I shall discuss the sub-heads in the following order: (i), (ii), (v), (iv) and (iii), as I consider that that is their order having regard to the difficulties that they present. On the first two heads it is not necessary to say very much. Of course, as Your Lordship pointed out in the beginning of this agenda, there cannot be much argument with regard to figures. One has to draw a line somewhere. But the main consideration, of course, must be the efficiency and workable character of these two Chambers. Figures as high as 600 for the Lower Chamber and 400 for the Upper Chamber have been suggested. There are only two considerations which I wish to put forward in support of the lower figures mentioned to-day in connection with both the Chambers. One is that the Upper Chamber, as we visualise it, will be elected by an indirect franchise; and, therefore, with regard to the Upper Chamber, there should be no such serious difficulty, on the score of what Sir Provash Mitter has described as "facility of representation," as there might exist in connection with the Lower Chamber. The figure of 300 mentioned with regard to the Lower Chamber is no doubt the highest of the three figures mentioned in the Report of the Federal Structure sub-Committee; but, having regard mainly to the fact that it will be a directly elected chamber, I consider that that figure is not too high—and we must always remember that we have almost unanimously agreed (I believe we have un-

animously agreed) that differences between the two Chambers are to be resolved by Joint Sessions, and we have also agreed that in these Joint Sessions all the Members of both Houses should take part. Well, that means that even taking these two lower figures, 150 for the Upper Chamber and 300 for the Lower Chamber, you will have as many as 450 members sitting in Joint Session, and the questions to be discussed in Joint Session will probably be of greater importance on many occasions than the questions that each Chamber has to discuss separately. You will find it difficult to manage as many as 450 members sitting in Joint Session, and you may find it almost impossible to manage 1,000, which number would be reached if Mr. Joshi's figures were accepted. A good deal has been said on both sides, and, as I have said, one cannot quarrel with ten more this side or ten more the other side; but we must have regard to the question of efficiency. I therefore agree with those of my colleagues who have suggested 150 and 300 as the figures for the Upper and the Lower Chambers.

Now, My Lord, I proceed to submit my observations under Head (v); and I realise that this is a matter which is not very easy of adjustment. On both sides arguments have been advanced as to why the population basis offers a very easy and a reasonable basis, and also as to why and on what considerations it may be necessary to modify it. Some of these considerations are mentioned in paragraph 29 at page 22 of the Report of the Federal Structure sub-Committee. I do not want to go into those considerations at length. Coming from a Province which has not a very large population, but which, from its geographical position, as well as from the military point of view, has a very special importance, I would be very reluctant to accept the basis of population alone as a basis for the distribution of seats between different Provinces. On the other hand, when I look at the other questions and considerations involved under the different sub-heads, in spite of my reluctance on this score and my very keen desire that the quantum of representation allowed to my Province in each Chamber of the Federal Legislature should be commensurate with its importance, I am constrained to consent to a *primâ facie* distribution on the basis of population—subject to this, that this part of my submission is a part of the whole of the submission that I am going to make under this Head; and I shall have to put forward a limitation with regard to this point when I go on to discuss sub-head No. (iii).

Coming to sub-head No. (iv), I have very little to add to what has been said in reference to part (*b*). I think 51 per cent. should certainly be the lowest proportion of the population of the Indian States which could be insisted upon for the starting of a federal constitution—that this percentage must participate in the Federation. Again, it is a matter for discussion; and I should not wish to develop any argument as to whether a higher figure should or should not be insisted upon.

As regards part (*a*) of sub-head (iv) my submission is—and I wish to make it clear—that it would be inequitable, if I may so

put it, on either side, either that the seats which have not been filled on the side of the States should be distributed among the States who are for the time being represented in the Federation, or that they should be distributed among the neighbouring Provinces—I realise that that was not a suggestion put forward; it was only an illustration given—or that they should be distributed between British India and the States. I would wish to proceed on a basis which I am going to submit with regard to sub-head No. (iii); and if any of the States' seats are left unfilled for the reason that the States or groups of States to whom they would have been allotted had they joined the Federation have not yet joined it, I would leave them vacant for the time being, and leave the strength of either Chamber at less than the strength which may be fixed as the normal strength of that Chamber.

My Lord, I now proceed to submit my observations under sub-head No. (iii); and here I would beg Your Lordship's indulgence to submit, with very great respect, certain considerations for Their Highnesses to consider under this head while they are considering the quantum of their representation in the Federal Legislature. All of us realise that this is an extremely important matter, and all of us are anxious that, as far as possible, we should be able to meet each other's views. It is in no spirit of arrogance or dictation that I proceed to make my submission; it is with the utmost humility and respect towards all my colleagues, and more particularly towards Their Highnesses. My Lord, on this question, in the first place, along with my colleagues on this side, I wish to assure Their Highnesses that they are right in insisting upon certain matters being guaranteed and secured to them. We realise that those are matters which peculiarly concern the States; and with regard to those matters I do not think there is the slightest desire on the part of any one that Their Highnesses should not insist upon those guarantees. It is for Their Highnesses to say what guarantees they want, and those guarantees should be forthcoming. These are questions of sovereignty, succession, dynastic questions, their Treaty rights and their internal autonomy. Once these matters are secured to them as securely as they desire, and in such manner as they desire, I am sure that, on this score, they should have no misgivings whatsoever. With regard to internal autonomy I wish to add only this sentence, that not only do we not desire, but we do not arrogate to ourselves the position that we have anything, if I may so put it, to teach Their Highnesses in the matter of how they should rule their own territories. As a matter of fact, as time goes on, we may have to learn some very profitable lessons from them. But I want them to consider this—that these matters being outside the Federal sphere, the Federal Government will have nothing to do with them. On the other hand, there is one other consideration which I would ask them also to bear in mind when they approach the consideration of this question which is outlined under sub-head (iii). It is this—that they agree to put into the Federation only certain subjects which they regard as being of common interest

and in regard to which they are at this moment willing to give up certain rights. But there is also that category of subjects with regard to British India which is described as " Central " subjects. I am aware that Their Highnesses have expressed their unwillingness to share in the discussions or debates in the Federal Chambers on the " Central " subjects—that is to say, subjects which are common to British India alone. But I want to point out that, in the nature of things, when we are going to have one Federal Legislature and no separate " Central " Legislature for British India, and when we are going to have only one Federal Executive, the position in practice will be that, at least so far as the Executive is concerned, Their Highnesses will be sharing in the administration of subjects which are purely British Indian subjects. That is a consideration which I hope Their Highnesses will bear in mind with regard to what I am about to submit.

Coming to the question of what has briefly been described as weightage, with regard to the representation of Their Highnesses in these Chambers, I must repeat one more consideration. That is that the Federal Structure sub-Committee has made a recommendation—it has expressed its view that the federating Units will be the Indian States or groups of States on one side and British Provinces on the other. Therefore, as I submitted in my very first speech in this Committee, there will be no question of preponderance of any Unit in this Federation. But let us go further than this theory, and let us look at actualities for a moment. I realise that, if British India were coming into the Federation as one Unit—if British India as one entity had common interests which might under some possible circumstances come into clash with the common interests of the States among themselves—if British India had one separate culture and the States another—if British India were inhabited by one race and the States by another race—if the people of British India were the adherents of one faith and the people of the Indian States of another faith—if there were any such cleavage or division between British India as a whole on the one side and the Indian States as a whole on the other—these would have been the strongest reasons for Their Highnesses insisting that, being the smaller partner in the Federation, they should be given a certain amount of weightage; and that would have been met generously on the side of British India. But, happily, there is no such difference. As Their Highnesses have themselves said, very often the division of interests and the question of voting will be decided on the ground of regional distribution rather than on the question of the yellow or the red colour on the map. As one can see, when these Federal questions are being discussed, that is bound to be the case. To take only one instance—supposing the question of Customs was being discussed, it is possible that the Maritime States, both British and Indian, might take one view, and the States in the interior of the country, both British and Indian, might take another view. It will be no question, I conceive, of Indian States versus British India, as Customs is going to

be one of the sources of Federal revenue. There will not be that difference to which Sir Provash Chunder Mitter has alluded.

That being so, my submission is that, having regard to the fact that matters that are of supreme importance to the States and are peculiar to them, are being excluded from the Federation—the Federation relating only to certain matters of common interest between Indian India and British India, and also including the policy, legislation and administration of certain subjects that are entirely British Indian subjects—I would beg Their Highnesses to reconsider this question of weightage. In such an Assembly, questions might arise relating to British India alone; British India might have an apprehension that a common executive dealing with these questions would not deal with them sympathetically in the interests of British India alone. But Their Highnesses can have no apprehension that, with regard to matters that are put into the Federation, there will be any such division as the States on one side and British India on the other. My submission is that, on the ground on which presumably the Indian States claim a higher representation than their population basis, it is possible for each British Province also to claim weightage. The Punjab, as I have said, might come forward on the ground of its martial importance; Assam might claim it on the ground of her backwardness; Bombay might claim it on account of its supreme commercial interests; Bengal might claim it on account of the political lead that it has given to the country, on account of its commerce, on account of intellectual superiority; and so on; and weightage could not be allowed to all. My submission, therefore, is that Their Highnesses should be content to be represented in the Legislative Chambers on the population basis, not because there is any desire on this side to minimise the importance of the States, nor that there is any desire on this side to get a greater share, as it were, of the spoils in any sense, but because, having regard to the character of the Federal Legislature and the subjects with which it will have to deal, Their Highnesses should have no apprehension that that representation does not give them an adequate representation. Therefore, upon this basis, both in the Upper Chamber and in the Lower Chamber I would submit that Their Highnesses should accept that position. I would repeat the appeal made to them by Mr. Sastri that, whereas there is every desire on this side—and proof has been given of that desire—to take into consideration the difficulties of Their Highnesses, Their Highnesses should take into consideration the difficulties under which British India labours and may have to labour with regard to the decision of these matters, and make it easy for British India to come into the Federation as it is the desire of British India to make it easy for Their Highnesses to come into the Federation. If, however, (and this is that limitation which I said I would wish to stress with regard to sub-head (v) after I had dealt with sub-head (iii) under any combination of circumstances, it is subsequently found that the States must be given representation in the Federal Chambers higher than that justi-

fied by their population, then my consent to the distribution of the British Indian share among the Provinces upon the basis of population, reluctant as it is, would disappear; and I would wish the British Indian share to be distributed among the Provinces, primarily on the basis of population, but supplemented by other considerations which are peculiar to each Province.

Naturally, the question of how the quantum of the seats allotted to the States should be distributed *inter se* among the States, is a matter entirely for the States to decide; and, with regard to that, British India would have nothing to say.

These are the considerations on the basis of which I have made my submissions, and on the basis of which the suggestion was put forward this morning that the distribution of seats between British India and the States should be in proportion to population.

Sardar Ujjal Singh : I shall be as brief as possible. With regard to the strength of the Lower Chamber, the general opinion on this side of the Committee on the last occasion was that it should be 300. We were led to this conclusion by the consideration that the House should not be too big for the proper transaction of business, and that it should not be so small that different interests could not be adequately represented. The view also prevailed that at least one Member should represent a million of population. According to that basis too we ought to have at least 350 Members, because the population has gone up from 303 millions to 335 millions. But there are other considerations which, to my mind, have a bearing. I realise the difficulties with which the States are faced, and also that a higher figure would facilitate direct election, and would make direct contact of the Members with their constituencies more possible. If we increase the number of the Lower Chamber to 400, I believe that it will find satisfaction both in the States and in British India. This number is not too high at all. The Simon Commission, after carefully going into the difficulties of election, suggested that the strength of the Lower House should be 300 to 400; and their conclusions were based, not upon a Federal Legislature in which the States would be represented, but for British India alone. Now, what I am suggesting is that we should have 400 Members both for British India and the States. If you compare this number with that in any other federation, not of the same size, but even of a smaller size, you will find that it is not too big. Canada, with a population of 8 millions, has a strength of 245 in the Lower House. If you come to the modern constitutions, Ireland has one Member for 30,000 population. In Czechoslovakia, a small country, there are 300 Members in the Lower House.

Coming to the second point, I would like to have 200 Members for the Upper House. Last time we generally agreed upon the number of 150. The consideration that is weighing in my mind is that at the last Session, we roughly fixed the strength of the Upper House at one half of the Lower House. If we are going to have 400 Members for the Lower House, we should not have less than

200 Members for the Upper House. This proportion prevails in many other countries. In Australia the strength of the Upper House is half that of the Lower House. In Canada the strength of the Upper House is less than half that of the Lower House. In Czechoslovakia the strength of the Upper House is exactly half that of the Lower House. At the same time, if we have 200 Members for the Upper House, it will help to solve the difficulties of the States.

Coming to the third point, I am of opinion that, in the Lower House at any rate, the States should not have any great weightage. Their proportion on a basis of population is 23·8 per cent., and at the utmost they should have 25 per cent. representation. According to that, they will have 100 Members in the Lower House out of 400. It ought to be remembered that there is going to be a certain number of official Members, not exceeding ten. Those Members will have to be provided for, and they will be provided for from the quota of the British India Members.

Turning to the Upper House, I realise that the population basis, as one of my friends remarked, is not always a fair guide. The importance of the States must be taken into consideration; and their sacrifice in joining the Federation should certainly be taken into consideration. At any rate, on the part of any member who claims a weightage for his own community, it would not be just to deny a weightage to the States. Last time some of us were prepared to go as far as 40 per cent. representation to be given to the States. That was the utmost that some of us agreed to. My friend, Mr. Sastri, agreed to one-third representation. For myself, I shall be willing to give them 35 per cent., which represents an average of their area and population, but if that is not sufficient to accommodate certain States and to make feasible and possible for some other States to join the Federation, I would be prepared to go as far as 40 per cent., but no further. By that the States will be getting 80 seats out of 200; and here, too, it should be remembered that official members have to be provided for, and they will have to be provided from the quota of the British Indian Members.

With regard to the fourth point, I would suggest that the vacant seats of the States, which may not consider it possible to join the Federation for some time, should be left unfilled, and as they go on joining the Federation the seats will be automatically occupied.

As regards point (*b*), in my opinion, at any rate, if 50 per cent. of the sovereign States which in their own right are members of the Chamber of Princes, representing 50 per cent. of the population, joined the Federation, then it would be possible to start with the scheme.

On point (v) I am not in favour of the seats being distributed among the Provinces on a population basis. I speak for my own Province, and my friend, Mr. Zafrullah Khan, has already spoken about the importance of the Punjab. On account of its geographical position, and on account of the contribution it makes to the

Indian Army, it does require a little weightage. And there is another reason. The minority interests cannot be adequately represented if the Punjab is given representation on a population basis. The Sikhs will certainly demand weightage. How are they going to get weightage in the Central Legislature if you are going to distribute seats to the Punjab on a population basis alone? At present the Punjab is given 12 per cent. representation both in the Assembly and in the Council of State. I would not go further than that; but I would certainly press that the existing representation ought to be maintained.

Mr. Joshi : You propose that there should be one Member for one million of population. That, according to the present population, means 250. Then we have to add certain weightage in the Upper and Lower Chamber. The weightage asked for by the Princes is about 10 per cent. That may require about 40 Members. Then the weightage claimed by the Muslims may require about 40 new seats. Then the special representation claimed by Europeans, Landlords and Labour, Industry and Commerce, would be about 35 or 40. Then the special representation of the Depressed Classes has to be considered, and 10 official Members. That will make the number more than 400.

Sardar Ujjal Singh : No, 400 I said; and you will give the States 100, *i.e.*, 25 per cent. That is roughly the population basis.

Mr. Joshi : I take the whole of India on the population basis—350.

Sardar Ujjal Singh : You will realise that there is not much difference between your contention and mine.

Mr. Joshi : I am thinking in mathematical terms.

Sardar Ujjal Singh : Not much difference. Out of 400, you will have 25 per cent. for the States, which is near about the population basis. Twenty-four per cent. is their population.

H.H. The Chief of Sangli : My Lord Chancellor, His Highness The Maharaja of Bikaner has already set forth with his usual ability, in his speech of yesterday, the view-point of the Indian States Delegation regarding the strength of the Federal Houses and the proportion of the representatives of the Indian States to those of British India in those Houses. I should like to lend my strong support to the view that the States should be represented as fully as possible, especially in the Upper House, not only in proportion to the representation from the British Indian Provinces, but also in actual numbers. My reasons, briefly, are that all the States being constituent Units in the new Federation, it is desirable both that as many as possible should be individually represented and that those which cannot be granted individual representation should at least have enough grouped representation to permit of their particular interests being voiced and, as far as may be, conserved. I trust that I shall not be accused of striking a discordant note if I venture to express a doubt whether the numbers which have been proposed for the two Houses will prove adequate

if the legitimate claims and aspirations of the States have to be duly met. The minimum number which I consider necessary for their requirements is 150, so far as the Upper House is concerned. If the representation of the States in this House is reduced to 125, or any similar number, it is obvious that fewer States will be represented individually, and that the representation of the comparatively small States must be small in amount and inconvenient in distribution. I am, of course, aware that in any case a considerable degree of grouping is inevitable. But the smaller the number of seats allotted, the larger will be the geographical extent of the groupings. A wide geographical area involves not merely physical inconveniences, but the junction in one electoral area of peoples of differing affinities and interests.

The arguments which have been advanced in favour of a small Upper House are: (1), that it would be of a manageable size; (2), that it would be less expensive; and (3), that it will consist of representatives of experience, weight and character. I acknowledge the force of these arguments; but I cannot help feeling that these advantages will be dearly bought if they reduce the representation of what are, after all, federating Units, though small individually, to a nominal figure. Indeed, the smaller States may have occasionally special points of view to urge in regard to Federal questions, which may even justify some weightage being given to their representatives.

While, however, I am urging the requirements of the States as a whole before this Committee, I do not wish it to be understood for a moment that I am opposing the demand for an Upper House of 250 Members. But I would strongly appeal to our British Indian friends here, no less than to the members of the States Delegation, who have shown such a generous spirit of accommodation, to give their liberal consideration to the requirements and aspirations of the comparatively small States. Any increase in the numbers of the Upper House which will permit of a more complete representation of the States will be very welcome to them. Without entering into details of distribution, which I think should be a matter for consideration, in the first place, by the States themselves, I do not know how their full representation may be possible within the limit of 125.

First of all, there are 109 States, the Rulers of which are members of the Chamber of Princes in their own right. Then there are the 126 States, the Rulers of which are represented in the Chamber by 12 members of their Order, elected by themselves. It is well known that many of these States have consistently protested against their exclusion from membership of the Chamber in their own right. The justice of the protest has been recognised by the decision of the Government of India to give one of them, namely Mayurbhanj, the right of membership. It is also known that the Political Department is re-examining the whole question and considering the right to similar membership of the other States

which are now excluded from permanent membership; and it is likely that some of them may be promoted, on investigation, from what is known as the second class to what is known as the first. Then there is the large number of the third-class States; they are 327. Many of these are inconsiderable in individual size; but their aggregate size and influence is considerable. They are bound to the British Empire by agreement which can as little be regarded as "scraps of paper" as the Treaties of their greater brethren. Above all, it is essential that this Federation of India should be universal, and that no discontented—I may almost say outcast—residue should be left without voice and without representation. It is in view of all these considerations that I venture to think that 150 should be the number allotted to the States in the Upper House.

As regards the Lower House, I see that the numbers must be based more largely upon population. I recognise, therefore, that there must be considerable groupings of the comparatively smaller States, if the figures of population are to be the main factor on which representation is to be based. Here again, however, it is essential that the electoral areas should be of manageable size if there is to be any real representation of the generally widely-scattered States. I fully support the desire of my colleagues on the States Delegation that a percentage of $33\frac{1}{3}$ of the seats should be given to these States. A House of 350 would, however, only allow of 117 Members being sent from States. For the reasons I have already given, I believe this would yield an insufficient representation. I would therefore prefer a Lower House of 450, with 150 representatives from the States, if the Upper House also has a strength permitting of 150 States' representatives. In any case the States should have, in the Lower House, a representation proportionate to their representation in the Upper House.

It has been stated by some of my colleagues that, if a few large States, representing 51 per cent. of the total population of the Indian States, were to join the Federation, the new constitution might start working. It has further been said that, pending the entry of the other States, those that have already joined the Federation would exercise the aggregate voting strength allotted to the States as a whole. While I generally agree with the idea underlying the suggestion, I venture to hope that, whatever constitution is evolved out of our deliberations, it will be as much attractive to the smaller States as to the larger. From this point of view it is necessary to see that the scheme of representation does not in any way operate unjustly in regard to the smaller units of Indian India.

My Lord, constitutions are made but once. Once they are made, the universal tendency in these rigid constitutions is to maintain, and not extend, whatever recognition may have been accorded by them to the Units covered by their provisions. That is why the States are anxious; and I venture to urge that their requirements and aspirations should receive due consideration at

this stage. His Highness The Maharaja of Bikaner has from the outset championed the cause of the smaller States. His Highness fought their battles successfully at the establishment of the Chamber of Princes. Evidence is not wanted, even during the short time that His Highness The Nawab Sahib of Bhopal has been working as Chancellor of the Chamber, that His Highness is anxious to uphold the interests of the States and secure justice to the smaller States. I hope the other distinguished members of the States Delegation will do what they can to further the well-being and advance the interests of all classes of States. The British Indian statesmen who are here are endeavouring to hammer out a constitution which will embrace in the new India every element that exists in the present-day India. I therefore appeal to my colleagues from British India and the Indian States to vouchsafe their earnest and sympathetic consideration to the point of view I have just placed before them on behalf of the States, which have their own traditions and importance, and whose Rulers and peoples are as anxious as the citizens of any other part of India to participate in the fortunes of their native land.

Mr. Gavin Jones: Lord Chancellor, I will not speak on questions (i), (ii) and (iii), because I do not want to enter into the battle of the percentages. Percentage is limited by 100, as the word implies; and I do not think that even this Committee can make 2 and 2 make 8. I think, Sir, that this question will have to be left to an independent tribunal.

With regard to question (iv), I just want to say one word. In the event of the Indian States' quota in either House not being filled, I submit, Sir, that the Crown has obligations for the whole of India as Paramount Power. We have heard a good deal about give-and-take; but it is quite evident that in this Federation nearly all the giving has got to be done by the Crown, both in its power over British India and in its paramountcy over the States. I therefore think that the Crown should fill the vacancies by nomination, to represent the Crown until such times as those States who have not joined the Federation agree to concede the necessary powers to the Crown to be placed at the disposal of the Federal Government.

As regards question (v), I am opposed to the idea of distribution by population. It is not satisfactory in federations of this kind, because they are representative of States and not of peoples. I therefore suggest that the eight major States should send an equal number of representatives to the five or six minor ones. The numbers will depend upon the numbers that are elected to the Legislature. When the United States of America was federated, it was only by giving an equal number of votes to all the States that they were able to bring about federation. This was at first strongly opposed by the major States, but they had to give way to the minor States. I therefore submit that, in all history, a population basis has never been found satisfactory for a federation. I

submit that we should take other matters into consideration. That is all that I have to say.

Dr. Ambedkar: I do not propose to say anything on sub-heads (i), (ii), (iii) and (v). I agree with what my friend, Mr. Joshi, said this morning upon all those points except in one respect. I am not wedded to any particular figure regarding the composition of the two Chambers. In my opinion, a given figure ought not to be our starting point. The figure ought to be the resultant of all relevant considerations. I may also say here that my sympathies are in favour of a larger Chamber, because I think that a Chamber, being a deliberative body, ought to be constituted in such a manner that all interests can find their place in it, without any particular interest having to be cramped into it.

There is one argument that has been brought forward against a large Chamber, namely that our Chambers must be business-like. I think there is some force in that argument, but I do not quite understand how the strength of the Chamber has anything to do with its business character. I should have thought that the business character and despatch of a Chamber depended less upon the numbers of which it was composed, and more upon the Standing Orders and the rules of business that it had framed for itself. Consequently, I would not limit it by that consideration.

The point with regard to which I propose to speak in particular is sub-head (iv). Taking part (*b*) of sub-head (iv) first, it reads thus:—

> "To what minimum extent must the adherence of Indian States be secured in order to justify the initiation of a Federal Constitution?"

It seems to me, with all respect, that that is a question which ought to be addressed to His Majesty's Government. It is they who ought to tell us what number was, in their opinion, necessary before the Federation could be initiated.

There is one question, the veil from which has not as yet been lifted. We are all told that the Indian Constitution of the future must be a Federal Constitution; but no one has yet made it clear whether it is the view of those who assert that proposition that the entry of the Indian States is a condition precedent for the establishment of a responsible government in a federal form. It is a subject on which it is difficult for me to speak unless I know definitely what is the view of those who take their stand upon that proposition. If you wish me to answer that question, then I will do so for myself; and my answer is that we need not wait for the adherence of any prescribed number of States for the initiation of the Federal Constitution. I do not know that there would be any British Indian who would like to put the establishment of responsible government in cold storage until the Princes make up their minds to enter into the Federal Government of India. I therefore think

that all that we need do for the initiation of the Federal Government of India is to put a clause in the Constitution to permit His Majesty, by Order in Council, to admit new States as they desire to come into the Federation. This is not something which is new. Such an arrangement finds a place in the Canadian Constitution, Sections 146 and 147, and in the Australian Constitution, Sections 121 to 124. The Canadian Constitution, Section 146, provided that, in the case of other units, which were not included in the Federation at the time when it was formed, in 1867, and which thereafter showed their willingness to enter into it, His Majesty could, by Order in Council, admit them as units of the Constitution. I think that it would be sufficient for our purposes to initiate the Federal Constitution with a clause of this sort. This would be consistent with the freedom of the Princes to enter or not to enter the Federation.

Coming to (*a*) of sub-head (v), we have had the suggestion from His Highness The Maharaja of Bikaner that the States joining the Federation, whether one or all or a few, should be entitled to exercise the whole of the voting strength that is assigned to them. In all humility, I submit that that is a proposition which to my mind is an astounding proposition. It is a proposition, if I may say so with due respect, without rhyme or reason. No justification has been made out for what I may call an extraordinary proposition of this character. What does it mean ultimately? It means this—that a single Prince coming into the Federation and taking part in legislation affecting the destinies of subjects of British India, will be able to throw in, in his voting capacity, the whole of the power of the Native States, without the British Indians participating in the Legislature having any right to do anything to affect the destinies of the subjects of those Princes who do not choose to come into the Federation. It is a terribly one-sided arrangement. A Prince who chooses to keep outside the Legislature will, under this provision, be able to acquire and transfer his vote to a neighbouring Prince or his colleague and give him the power to affect the destinies of British India. That, I submit, is something which is without justice and without equity in it, and it is something to which I, for myself can never consent. The only right thing and the only proper thing would be that the voting strength of such Princes as would be willing to come into the Federation should be confined to the particular quota of votes that will be assigned to them under the arrangements proposed by Sir Mirza Ismail. If a single Prince comes in, and if he has one representative, he will be entitled to one vote. If groups of Princes come in, and under the system proposed by Sir Mirza Ismail the group has got two votes assigned to it, the group will have to come as a group and will not have the power to exercise more than its two votes. The other arrangement would be one to which I, at least, would be unable to give my consent.

(The Committee adjourned at 4-35 p.m.)

PROCEEDINGS OF THE TWENTY-NINTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 24TH SEPTEMBER, 1931, AT 11 A.M.

HEAD 1.

Strength and Compositions of the Federal Legislature—(concluded).

H.H. The Maharaja of Bikaner: My Lord Chancellor, I am extremely reluctant to inflict myself on the Committee again, and I am indeed grateful to you for giving me this opportunity of speaking about some important points that bear on the questions which we have had under discussion during the last two days. I have already explained that my business, in the second part of my speech on Tuesday, was to place before you, as faithfully as I could, the unanimous, or the majority, view of the Indian States Delegation And before proceeding further, I should like to express my gratitude to the various speakers, and especially to my friend, Mr. Sastri, for their spirit of friendliness and understanding as regards the standpoint of the States, even though it was inevitable that, on some points, unanimity was not possible to be attained—at least at the present moment.

Before dealing with what, amongst the States' problems, is one of the most important—namely, the question of the smaller States and their adequate representation—I must refer first to certain views propounded yesterday, especially the suggestion that a strong and impartial committee be appointed by His Majesty's Government to hear evidence and to allocate seats in the Federal Legislature amongst the States *inter se*, as also some remarks as to grouping, and the minimum or maximum number—as one looks at the question—which by some speakers was deemed sufficient for the States. Sir Mirza Ismail said that any settlement amongst the States was unlikely. I regret I am compelled to challenge Sir Mirza's statement. To quote his own words in the official proceedings, he said:—

> "The fact that I do not agree with him here"—(he was referring to His Highness the Chancellor of the Chamber of Princes, our other leader here, His Highness of Bhopal)—"seems to be sufficient justification for the appointment of a special independent committee to decide this question."

If the *obiter dictum* of this statement is to be translated into literal action on every point when a British Indian or States Delegate disagrees, I do not know where the States and British India will ultimately find themselves. We cannot and should not, I submit attempt to force our views on others.

Now, Sir, I am the first to admit that every Delegate on this Committee or the Round Table Conference, including the members of our States Delegation, has, of course, the right to express freely his individual opinion; but, as different opinions have been express-

ed by a few members of our Delegation, it is with extreme reluctance that I claim, in my turn, the right to express my clearly contrary views. I wish to make it clear that such individual expression of views by Sir Akbar Hydari and Sir Mirza Ismail should not be taken to imply that they represent by any means the views of the States Delegation as a whole, and certainly not of either the majority of us present here or of the vast majority of the Indian States, for which I claim, on more grounds than one, to speak with considerable inside knowledge and authority. Indeed, I can see nothing more likely to cause at this stage a serious split amongst the States or to wreck federation, as far as the States are concerned. I must once again say with what regret I have to criticise some of these observations, all the more so as they come from Ministers of the most important of the important States in India, and furthermore from old friends like Sir Akbar and Sir Mirza. But I would beg them to realise that, beyond honest and strong differences of opinion, nothing personal is intended, and that, if I appear to speak in a blunt manner, it is the fault of my outlook and actions, being those of a plain soldier who does not beat about the bush or use any long-winded, meaningless words where he differs.

As I have already stated, this is a case of history repeating itself; and I think it is generally known that grave alarm and concern have, in the circumstances, not unnaturally been created amongst the States, as was the case when individual membership of the Chamber of Princes was similarly under consideration.

Sir Mirza Ismail: My Lord Chancellor, I wonder whether there is any necessity for such a long statement challenging our representative capacity.

H.H. The Maharaja of Bikaner: I did not challenge their representative capacity, My Lord.

Sir Mirza Ismail: All I stated was—and Sir Akbar Hydari also expressed his agreement with me—that this was a question of immense difficulty and complexity, and instead of attempting to solve it amongst ourselves—because I thought and still think more firmly than ever, after what has been uttered yesterday and to-day, that it is impossible for us to settle it amongst ourselves—the best plan and the most obvious plan was to refer it to an independent committee on which there should be no representative of any State in India. Is not that a more satisfactory method of solving this intricate problem than trying to solve it amongst ourselves? I feel that the very attempt to solve it would engender so much heat and so much jealousy that it would do far more harm than good; and in the view that I expressed I was supported not only by Sir Akbar Hydari but also, I believe, by His Highness The Gaekwar of Baroda. So there are Baroda, Hyderabad, Mysore, Jodhpur and Jaipur who are all in favour of this view, and it may be that some of the smaller States also may hold this view.

H.H. The Maharaja of Bikaner: And others may be against it.

Sir Mirza Ismail: That is all I said, and nothing more.

H.H. The Maharaja of Bikaner: It is because we hold different views on these very important matters that I want to place them before you.

Sir Mirza Ismail: My friends on the other side, some of the most eminent leaders in British India, have also said that this was the most satisfactory way of dealing with it.

H.H. The Maharaja of Bikaner: We did not interrupt certain members of our Delegation when they put forward their views, and I hope that those who hold contrary views will be allowed to have their say.

I was saying, as I had already stated previously, that it was a case of history repeating itself, and that grave alarm and concern were already felt as regards the position created amongst the States, as in the case where individual membership of the Chamber of Princes was under consideration. I had intended to deal with this point also in my speech the day before yesterday; but I refrained from doing so on various grounds, and also in view of the fact that, I having been brought up as a soldier in the strict school of discipline, I felt that, in the second stage of the proceedings, my business was merely to voice the views generally of the States Delegation. But we should be laying ourselves open to justifiable attacks from Princes and States—and especially those in India—whom we have the honour to represent here, if we did not say anything on the subject. May I here read to you the full text of the resolution, to which His Highness the Chancellor referred, approved unanimously at the Bombay meeting in July last of our States Delegation, embodying the proposals of a Committee of Ministers, on which Sir Akbar Hydari also served, and, in the unavoidable absence of Sir Mirza Ismail, we also had the benefit of having there Diwan Bahadur Krishna Rao, a member of the Mysore Government.

Sir Mirza Ismail: Sir Akbar Hydari?

H.H. The Maharaja of Bikaner: Sir Akbar Hydari was on the Committee. This was the proposal accepted by him on the Delegation, and Sir Mirza Ismail had a representative there—I believe the senior member of the Mysore Executive Council. This resolution runs as follows:—

> "The distribution *inter se* of seats amongst the States in the two Houses should be left to be settled by the States. Failing agreement the points in dispute should be referred to an expert committee to be appointed by the Crown."

The Indian States Delegation adopted in its entirety the Ministers' Report which dealt with this and other points, with the single modification, suggested by Sir Akbar Hydari himself, that the strength of the Upper and Lower Houses should not exceed 250 and 350 respectively. This I believe still to be the view of the majority of our Delegation. Here I must observe, first, that the question how seats are to be distributed amongst the States—as

observed yesterday by His Highness the Chancellor—was a matter which did not arise in any sense before this Committee. The settlement would also depend on the question of the total membership of the two Houses, and the proportion of seats available to the States. Secondly, Sir Akbar Hydari yesterday agreed with His Highness the Chancellor, and admitted that this point did not concern this Conference. It has already been fairly and correctly stated—that I gratefully acknowledge what has been said by some British Indian leaders—that this is a matter purely for the States to settle amongst themselves. Thirdly, it is in any case premature to discuss this point here in view of the resolutions of the Chamber of Princes, to which I referred the other day, and the mandate given to us on this and other questions. This question, together with others, will have to be discussed amongst the States; and, therefore, it is not within the power of any State, or States Delegate or representative to prevent such discussion. After such discussion in the Chamber of Princes, a thoroughly representative committee will—in accordance with what, I have little doubt, will be found to be the view of the majority of the States—have to be appointed, to work in close association with the Viceroy, as a result of which, and through the good offices of the Viceroy, I am in hopes that conclusions equitable to all concerned will yet be possible to be arrived at. This committee would, of course, consist, not merely of members of the Chamber of Princes, but also States which—although members of the Chamber of Princes—do not avail themselves of the privilege of such membership, as well as representatives in a reasonable number of the smaller States, and, as far as possible, the various other units of Indian India. That, in my opinion, Sir, will be the right time and place for more detailed proposals and for the various views and claims of the various categories of States to be put forward, when—again I repeat, through the good offices of the Viceroy, and according to the strength and justice of the claims of the different States and the different categories of States—I decline to share the pessimistic view that it will be impossible for any agreement to be arrived at on any point amongst the States. However, as I have already made clear—and that is the view of the majority of the States Delegation—should there unfortunately be no agreement, then such points as are still in dispute will doubtless have to be referred—as, I think personally and in certain cases only—to the Viceroy, and others to an expert committee of arbitration to be appointed by the Crown.

Chairman: Might I add at the end of that last sentence: "To an expert committee, appointed by the Crown, whose decision shall be final."

H.H. The Maharaja of Bikaner: Well, Sir, that is my view—if we find that there are certain things that we can refer to arbitration. On the other hand, what the other States will feel about this I am not in a position at present to say. The discussion will have to be in the Chamber of Princes; then we hope the Viceroy

will settle some things. Other points of course will have to be adjudicated upon by arbitration. Of course, that will be final. If there are certain points of difference which can go to arbitration, the decision will have to be accepted; but it does not mean, therefore, that States will have to come into the Federation against their wishes. I cannot, therefore, see what any of the large or important States have to fear from such preliminary attempts to arrive at unanimity, or at least the greatest achievable measure of unanimity, or why they should attempt to deny to the various States the fullest and freest opportunities of at least first discussing the question amongst themselves and putting forward their views and proposals. I wish to say, Sir, that I have not the least doubt that several even among the important States, after reviewing our work, and hearing the discussions and final recommendations of the Round Table Conference, will themselves want to proceed on a method something like that which I have outlined.

My Lord Chancellor, I wish to make an observation with reference to what has just fallen from Sir Mirza. I trust that no one here, or in India, will take it as implying the least unfriendliness to any Prince or State; but, even amongst the individuals and States, of equal rank, *inter se* there is necessarily relative seniority and juniority. The important—or, as I prefer to call them, the larger—States, and the smaller States, can be distinguished by various tests, such as population, area, revenue and other important factors. Hyderabad indisputably stands first amongst the 109 members of the Chamber of Princes, in the same way that the 109th member ranks after the remaining 108. But, through a combination of circumstances, an impression has been encouraged among some States, which I am sure it will be the wish of the biggest of our big States also to remove. That is that there are only some three, or six, or a dozen, or fifteen—I deliberately abstain from giving any specific number—which are the only States that count, and that no other important States exist. Here, My Lord Chancellor, may I repeat that there are various tests—not merely population, area and revenue, but other generally recognised tests in judging the importance of the States by which the Viceroy and the British Government have been guided when there have, for instance, been disputes—as I think Lord Reading will admit—of precedence between States *inter se*. These tests are, for instance, Treaties, measure of sovereignty, past traditions, independence, history, political importance and influence, and such other well-known tests. It was on such grounds that I felt compelled to put a question to Sir Mirza when he claimed, if I understood him rightly, for the great States of Jaipur and Jodhpur—whose advisers are associated with him here—the still prouder position amongst the many big and important Treaty States of Rajputana of being the biggest. It was, therefore, that I asked whether Udaipur was not the biggest.

Whilst I am on this subject, I may say that, if we proceed on the mere test of population in regard to the relative importance of the States, or as to their entry into the Federal Legislature, we

shall find ourselves in the midst of the most frightful complications and anomalies. For instance:—(1) Udaipur, on the basis of its population, would receive only half the number of seats of Jaipur—a position of inferiority which it would be impossible to conceive that Udaipur would ever accept; (2) Mayurbhanj, the latest member in its own right of the 109 members of the Chamber of Princes—whose relative importance and sovereign rights I am the first to admit, and whom we were glad to welcome in our midst—would have come 17th in the list of all the 109 members of the Chamber of Princes; (3) In the last 6 of the first 28 States, according to population, there are 4 States—I say nothing to detract from their relative importance or the sovereign powers they possess—which, on a population basis, though not among the first 109, would come, as I have said, among the first 28. (4) Then Kathiawar—which, with Central India, possesses the largest number of various units of Indian India—has in addition 185 non-salute States, including non-jurisdictional talukas. There are 15 other salute States. Of these the most senior—Junagadh—would come 23rd in order of population, after some who have just joined as members of the Chamber of Princes; and so on. But these three States—that is to say Junagadh, which I believe is the premier State in Kathiawar; Nawanagar, which I believe is the second; and Bhavnagar, which I believe ranks third—would come 23rd, 32nd and 27th respectively, although these three States either exceed or approximate a crore of rupees in revenue; and all these three States enjoy dynastic salutes of thirteen guns.

I shall now deal briefly with the question of salutes, which has a bearing on this. There are admitted anomalies in this, even though salutes serve as a somewhat useful guide in certain directions. In this connection I have been repeatedly and expressly asked by a large number of States to make it clear on all occasions, that salutes alone should not, and cannot, be taken as one of the essential tests qualifying for individual entry into the Federal Legislature. May I here quote two brief extracts from an official speech made by a former Viceroy, Lord Chelmsford? Speaking on the identical question of qualifying tests for membership of the Chamber of Princes—then about to be inaugurated, and when the constitution of that body was under consideration—Lord Chelmsford stated on the 20th January, 1919, in the Princes' Conference which was held previous to the establishment of the Chamber of Princes, that Mr. Montagu, the then Secretary of State for India, and he were of the opinion that—I quote his own words:—

> "the whole question of salutes needed most careful investigation in view of the anomalies which appeared to exist; and we held, therefore that it would be unwise to base upon the salute list, as it stands, any fundamental distinctions between the more important States and the remainder. *It* appeared to us that, if such a distinction is made, *it must be* based upon constitutional considerations; *that is to say, upon*

the nature of the link between the individual States and the Crown."

Again, at the next Princes' Conference on the 3rd November, 1919, the Viceroy referred to the same question in the following words:—

> "Your Highnesses will remember that, in my last speech, I said that Mr. Montagu and I felt that the whole question of salutes needed most careful investigation in view of the anomalies which appeared to exist. If the principle I now advocate is to be adopted as the basis of classification, it will be additionally desirable that this investigation should be undertaken at an early date, in order that anomalies, whether already existing, or likely to ensue, from the institution of the dividing line, should be corrected wherever possible. My Government are ready to give their earnest consideration to this matter, and will make the necessary recommendations to the Secretary of State for submission to His Imperial Majesty in due course."

But unfortunately nothing has been done.

Now, Sir, if I may, I will make a few essential observations regarding what are known as the smaller States, whose cause especially in this connection was so ably and sympathetically supported by His Highness of Bhopal in particular during the last Session. I state, with a full sense of responsibility, that this problem will be an extremely important consideration in all matters affecting the Indian States. It is inevitable that the position of the larger territorial units amongst the Indian States should loom prominently; but I am free to admit, as the Ruler of one of the important States in India, that although it would tickle my vanity to think only of myself as Ruler of one of the bigger States, that will not work in the problems before us. I beseech you all—whether you are Members of His Majesty's Government, or of the important Parliamentary Political Parties in Great Britain, or Delegates from British India, or from the Indian States—not to let there be any misunderstanding on this point. The adequate and due representation of the smaller States (and I refer to the smaller States proper, and not to various units which do not come under the category of sovereign States) in the Federal Legislature, is not only a matter, therefore, of great importance to the States as a body; but, it is my honest and unshakable belief, of very direct and immediate consequence to the success of the Federal scheme, as far as the States are concerned. I hold strongly that the interests of the smaller States are the interests of all the States. Their welfare and continued existence is our most jealous care. Their sovereign rights and privileges it is our duty also faithfully to safeguard, as it is also our duty to further all their legitimate aspirations and to consider with sympathy, and to support, all their reasonable demands.

My Lord Chancellor, After all, the so-called smaller States (which is at least largely a matter of comparison) comprise also

several of the 109 States which individually are members of the Chamber of Princes in their own right. It is possible that when the claims of some States, who are not at present members of the Chamber in their own right, are further examined, there may be some who will be found entitled, by a slight adjustment, or concession, of their sovereign powers or by further examination, to be held eligible for membership. I will not hazard a guess as to numbers. That question does not immediately arise here since, in the first place, it concerns membership of the Chamber of Princes, and will also be taken up in regard to the revision of its constitution.

I wish to emphasise that nothing less than 125 seats for the States is at all likely to satisfy the claims of the States as a body.

I would conclude my observations to-day by reminding this Committee of what I have repeatedly urged and stressed in the past —here in the Round Table Conference and elsewhere—namely, the importance and need, in justice to the States and their subjects, that the representation of the States in the Federal Legislature cannot be based merely on area or population, but that regard must also be had to their sovereignty and internal autonomy, their relations with the Crown, their political importance as one of the two great separate entities in India, and also—to quote from the Simon Report—

> " their existence and influence, and the Crown's obligations in regard to them ".

After hearing the debate yesterday, I now desire to give expression to my personal and definite view that a test of 51 per cent. of the population of the entire Indian States' territory will not suffice as a test for the States joining Federation. What number that should be, or what the number of States joining should be, I shall probably have an opportunity of dealing with, and of expressing my final view upon, after we have discussed the point in our Delegation.

Chairman: Before I call upon His Highness of Dholpur, I think I should read a letter which I have received from His Highness, as it will explain his position. What His Highness says is this:—

> " The speech that I am making to-day has been purposely so framed as not to raise controversial issues of an intricate nature at this stage. It was necessary to do so, in view of the fact that at yesterday's meeting of the States Delegation, it was found to be necessary to continue further discussions on the matter there, before it was released to the Federal Structure Committee in all its details.
>
> I have, therefore, to postpone the idea of having the draft proposals circulated to all the members of the Committee for some time later.

At present, I am confining myself to general reference to the main idea underlying the proposals and to answering the questions under Head 1, which we are discussing."

Sir Akbar Hydari: May I make a personal explanation at this point? I simply want to say that what I said yesterday was by way of an illustration to show as to how, if we decided to adhere to the number in the Upper Chamber as being only 100 and the number in the Lower Chamber as being only 200 (in case we were forced to have a bicameral House), that even a number of seats like 50 would go round and could represent adequately the Indian States in a sufficient way to allow all these States to send representative statesmen to safeguard the Indian States' rights. So far as the tests of priority, grade, and so on, are concerned, I said nothing. All those tests which His Highness of Bikaner has read out may be applied, and then the number distributed. All I wanted to say was that it was possible to frame a scheme whereby even 50 seats could go round, and thereby enable the two Houses to have that evidence of stability, and to have those men of experience, on which I have been all the time insisting. I took the population basis as the test which I had readily at hand—which was the most definite, and which was the most up to date which I could obtain—but I did not thereby say (and I think I made it clear) that the population test was to be applied finally in determining the relative importance or the number of seats to be given to the different States *inter se*. I also said that I think, as Sir Mirza Ismail has said, that probably it will not be possible to come to any agreement among the States themselves by mutual conversations, and what we were afraid of was that, if we started here, such a type of atmosphere would be engendered as would not be very conducive to a peaceful settlement ultimately—which would be the case, if, in the first instance, the whole ground was explored by an independent body of the kind to which it would have to be referred in any case in the end.

H.H. The Maharaj Rana of Dholpur: Lord Chancellor, At the last Session of this historic gathering, the great principle of a united India was evolved and a large number of the States represented here generally approved of the idea of an all-India Federation. It was on that basis that the outlines of a constitution were worked out by the Federal Structure sub-Committee. After the adjournment of the Conference in January last, the scheme of Federation was examined minutely in all its aspects by the Princes in India. My brother Princes had occasion to discuss it at the last session of the Chamber of Princes and at subsequent meetings specially convened for the purpose. As a result of these discussions they came fully to realise and appreciate the delicate implications of the various provisions concerning the States. At many places the scheme had purposely left out certain very important points, like the composition of the Federal Houses, the proportion and method of representation of the States therein, and so on, without which the picture was not complete. It is these points which we

are discussing now; and the Princes felt that it was their duty to contribute their own ideas to the solution of these problems in a way which would be satisfactory from all points of view, and would at the same time provide essential safeguards for their internal sovereignty. On the one hand, they were quite clear in their minds that it is essential, in the larger interests of India as a whole, to devise suitable means for co-operation between British India and the Indian States. They are fully conscious of their duty to India as a whole—and here, I am sure, I am speaking on behalf of the entire Order of Indian Princes—that they have never tried to stand in the way of or retard the political advancement of British India and the fulfilment of its legitimate aspirations. On the contrary, they, as sons of Mother India, will be glad to see India achieving its due and proud place of an equal partner in the British Empire. On the other hand, they are deeply concerned about the responsibility that lies on their shoulders as the trustees and custodians of the rights and privileges of their beloved subjects and of their proud and age-long heritage. Nor can the Princes, who have loyally stood by the Crown through peace and war and have made genuine and affectionate sacrifices for His Imperial Majesty—of which the British Government are fully aware—ever disregard their traditional and time-honoured relations with the British Crown, and countenance suggestions which may lead to consequences not compatible with the maintenance and continued observation of these obligations of honour into which they have entered.

Having these considerations in view, a section of the Princes felt it to be their duty to devise means which would provide for the evolution of United India, while maintaining unimpaired and secure the internal sovereignty of the States and their relations with the Crown, without altering the basic principles, underlying the great labours of the Round Table Conference last year. For this purpose, a conference was convened at Bombay last month, at which, after prolonged discussion, proposals were framed to achieve the object in view. I have been authorised by the conference to lay those proposals before this Committee for the consideration of its distinguished members.

I must, if I may, in the beginning, make it quite clear that we have been wrongly accused in some quarters of trying to wreck the all-India Federation. Our only difference is about the way in which this Federation is to be brought about; and I have already indicated above that the way that we adopt should be such as would satisfy the considerations enumerated.

The Simon Commission visualised two distinct ways in which an all-India Federation may be achieved. One way is that the States individually should come into a Federation with British India or its Provinces, and the other is that the Indian States may first confederate between themselves, and then this confederation should federate with British India, whether constituted on a federal or unitary basis, or with the Provinces. This committee adopted the first alternative; and they proposed to avoid the difficulty pre-

sented by smaller States, which possess small areas and populations, by providing to group them together for the purpose of federation.

The scheme drawn up last year lays down that:—

> " the component elements of federation should be on the one hand—
>
> (*a*) the federating Provinces of British India, and on the other hand,
>
> (*b*) such Indian States or groups of States as may enter the Federation.
>
> Provision should be made for the subsequent entry from time to time of such further States or groups of States as agree to enter the Federation."

It leaves the States free to join or not to join. It is frankly admitted that a large number may not join immediately. Taking the 109 sovereign States, which are members of the Chamber of Princes in their own right, supposing 50 of them join while the rest decide not to join, what will be the quota of representation that will be allotted to those States which decide to join. The claim for 50/50 representation, advanced by the States here, is based upon the clear assumption that the whole of Indian India is coming in. We know for certain that the whole of British India is coming in, but we do not yet know similarly anything definite about the Indian States. Along with this, we have to remember that, even if all sovereign States were to be recognised as Units for representation, the question of the large number of big and small Units which do not enjoy the same amount of sovereignty would still remain; and grouping them regionally, or on some other basis, to form Units for federation and representation in the Legislature, does not seem to be a way out of the difficulty, as I am afraid it may not be easy to find a basis for forming groups which would satisfy the various States brought in, as their interests and requirements may be varied and not always easily adjustable. Presumably, they will be formed on the regional basis. Take Kathiawar—apart from a few big States, which might get individual representation, most of the others will have to be grouped together. Supposing some of them stand out at the beginning and those that join are grouped together, are the groups to be re-arranged when some of those others decide to join? In that case it would not be easy to find a formula which would ensure the Federation to run undisbursed, as there will be continuous re-shuffling of groups till all the States have come in.

Then, there is the question of the position of the States which decide not to join. What is to be their position as regards their relations with the Viceroy, representing the Crown, on the one hand, and with the new Federal India on the other?

Besides that, the question of allotting representation to those different States and groups of States would in itself present great difficulties. It has already been very widely discussed, and the replies received to a questionnaire, issued by His Highness the

Chancellor of the Chamber of Princes, go to show that the Princes or States are by no means agreed on that point.

These are some of the questions that arise out of, and seem to be inherent in, the scheme as it stands to-day. There has been a great deal of discussion on these questions here and different solutions have been offered. The solution of all of these difficulties appeared, to many of those that I have the honour to represent, to lie in bringing about some sort of Union of States mainly for the purpose of federation with British India. It is obvious that many of the States will have to be grouped in order that they may form Units for representation in the proposed Federal Legislature; then why not let us have one group of all States put together, big and small, so that the process may be simplified and difficulties and possible misunderstandings may be overcome?

There arises the question as to whether the bigger States can be expected to agree to such a proposal; but I, for myself, see no reason why they should not, if their share of representation in the Federal Legislature is guaranteed even through such a Union of States, and it is not difficult to devise means for doing so.

It has been generally recognised by all concerned, and has been definitely provided in the first Report of this Committee, that the elements of federation are to be two, British India and Indian India. This was also emphasised by the Secretary of State in his speech yesterday, when he referred to two interests combining to form the Federation. This is just the real situation, and I would urge that these elements of federation may be more definitely appropriated to the position of the units of federation. It would simplify matters a great deal if we have a Union of States joining hands with federated British India or federating British Indian Provinces. There would be no continuous reshuffling of groups or of constituencies, no difficulties about allotments of representation, and so on; and it would tend to smoother working and a greater stability of the Legislature. If the States are so grouped together, the question of the method of election also becomes simpler. It is proposed that this Union should form an electoral college to elect representatives on behalf of the States for the Federal Legislature. Of course provision will be made for the due representation of the bigger States, of all regional and special interests, and for the proper representation of the smaller States.

I am glad that the bulk of opinion expressed by my friends from British India seems to be that the question of the methods of the representation of States should be left to be decided by the States. I am glad at this spirit of accommodation that they have exhibited; but may I put it to them that the proposals that I have the honour to submit would introduce the principle of election by a joint electoral college, and it would be a distinct advance on nomination by the governments of States individually.

I may point out another benefit that will accrue to all India from this method. If individual States are allowed to send their

representatives to the Federal Legislature, it may not be possible for some of them to find the talent, which the Federal Legislature would greatly value; but, if representatives are returned from an electoral college, we will be able to put at the disposal of the Federation the united wisdom and the selected talent of the States. This would be a sure guarantee that the right sort of element will come to the Legislature, which will further ensure its stable character, and, consequently, that of the Government as a whole, the value of which cannot be minimised.

It cannot for a moment be disputed that this proposition is practicable, and I see no difficulty in bringing it about, for the framework of such an institution already exists in the Chamber of Princes. The Chamber is at present an officially recognised advisory and consultative body. It can easily be developed to serve the above purpose if it is allowed to function also for the purposes of the all-India Federation. As to minor details about the reconstruction and expansion of the Chamber for this purpose, we need not refer to them at this stage. Those are matters which concern the States exclusively.

I think that I have taken up a good deal of the valuable time of this Committee, and I feel that I need not go into the details of this method at this stage, particularly in view of the fact that the consensus of opinion on this Committee happily seems to be that the question of the method of election to the Federal Legislature should be left entirely to either party to decide.

After these general remarks, I now come to the questions, which have been under discussion here, under Head 1. My reply to the questions is the following.

In reply to questions numbers (i) and (ii), I do not think that it is easy to prescribe any numbers. All that I want to emphasise is that the Federal Houses of Legislature should be capable of accommodating all the multifarious interests that may legitimately seek and deserve representation.

On sub-head No. (iii), I am in complete agreement with the view which has already been expressed from this side of the House. The reasons that justify the claim of 50/50 in the Upper House and $33\frac{1}{3}$ per cent. representation in the Lower House, are, firstly, what I have already mentioned above, namely, that two distinct interests are combining to form the Federation, and it is a recognised and well established principle of federation that, in the Upper House at least, all federating units are equally represented. Besides that, though population is a criterion and an important one, sovereignty and its sacrifice, political position, and many such other considerations, must be given their due weight in deciding this question.

Then there is point No. (iv). In view of this suggestion that I have made, that the States should form one group for purposes of federation, this question also admits of easy solution. This group

will be entitled to all the representation which may be allotted to the States from the very start. Those States that join later will be admitted into the group and will find their places, and it will not at all disturb the arrangement so far as the Federation is concerned. Of course it is hoped that, under this idea, a large majority of States will join the group from the very beginning.

Point No. (v) does not concern the States.

This, my Lord, is my submission in brief.

In the end, before I close, I would like, if I may, to refer to the cordial feelings which have been expressed by our friends on the other side with regard to the part that the States Delegation has played in the evolution of a scheme for United India, and I heartily reciprocate those feelings. As I have already said in the beginning, the Indian Princes are only too glad to be able to serve the cause of the country as a whole, which I may respectfully point out is not a new thing in history. This is not incompatible with British India or its Provinces enjoying autonomy and the Indian States enjoying their sovereignty in their different spheres. I welcome the very laudable offer of give-and-take, which has come from one of the greatest leaders of India, on whose sympathies, whatever claims British India may have, the States have a claim by reason of his birth in Porbandar—an Indian State—and I heartily accept it in the spirit. But may I venture to suggest that, what I honestly believe is more necessary for bringing about a lasting and really friendly feeling, which alone can form a solid basis for an agreed solution, is that give-and-take may be exercised in the humane and truly accommodating spirit of live and let live. We have our different systems of government, and it seems to be futile to attempt to bring all to agree to the same system throughout with a stroke of the pen. Let us remember, Rome was not built in a day. If the States are to come into a federation—and they have been welcomed into it—they should not be expected to give up those ideas and institutions which have stood the test of time and proved to be good and wholesome, and supplant them with ideas and institutions copied from abroad and still undergoing a crucial test. Let them live in their own way to advance and evolve their own systems; and then, perhaps, they will be able to make solid and concrete contributions to the political growth of India as a whole, which may be truly great. Let them evolve some system of government, which, while preserving the essentially Eastern character of paternal monarchy—the treasured inheritance from the ancient and immemorial traditions and culture of India—will satisfy the people's requirements and will not be foreign to their genius. While the foundations of a United India are being laid, our aim should be not to look to the immediate future only, but to pierce through the mists of uncertainty, and cast our glance ahead to times when the coming generations of our Motherland will taste with relish the fruits of the mighty tree which is being planted now, and will bless those who have spent their time and sacrificed their comforts to bring it into being.

H.H. The Maharaja of Rewa: My Lord Chancellor, Bearing in mind the views which have been expressed from this side of the table by my colleagues, both brother Princes and the eminent Ministers, it is unnecessary for me to cover the same ground. Almost all the points have been touched upon and discussed. There is, however, one point to which I have attached a very great importance ever since the question of federation came into the arena of discussion. This question is the distribution of the States' representatives among themselves, and is, to my mind, of vital importance.

The term "bigger and small States" has often been used, sometimes casually, and at other times seriously; but the definition on which the comparison is going to be based in the future is not yet decided. I admit that it is a question which concerns the States alone, and the decision will have to be arrived at between the States, with the assistance of the Crown, if they feel unable to decide it unaided; but I wish to make it abundantly clear that Treaties, internal sovereignty, tradition, and historical importance are facts which cannot be lost sight of when the time comes for deciding upon the definition of bigger and smaller States.

I should therefore like to urge that any definition based merely on population and area, etc., will not satisfy a very great majority of States. Treaties must be taken as living factors which should not be minimised if the adherence of the majority of the States to the Federation is to be achieved. The States on the whole will not view with equanimity any proposal whereby their long-enjoyed and time-honoured sovereign status is placed in jeopardy.

I feel certain that my brethren in British India will sympathise with us when we try to safeguard our existence; and I am also convinced that the Crown, which has taken upon itself the duty of seeing that our Treaties are honoured and respected, will also bear this fact in mind. When I say this, my words should not be taken to mean that I wish to stand in the way of constitutional advancement. The importance that I attach to our Treaties and other time-honoured factors is not only on behalf of the conservatives amongst the States, but I hope and expect that it will be shared by the majority of Princes in India.

Now, My Lord, I have said what I have to say, and I am extremely grateful to you, Sir, for having given me the opportunity of expressing my views.

Sir Tej Bahadur Sapru: My Lord Chancellor, In obedience to your behest, I would like to make the few observations I have to make as brief as possible, on the various points that have been raised on this side of the House or on the other. But before I do so, I shall crave the indulgence of my colleagues to remind them of something which we are apt to forget as discussion develops and arguments multiply. We are sitting here at this Conference upon definite terms of invitation which we accepted last year, and which those who were not present last year, but who have come now, have

accepted this year. The whole object of this Conference was—and, I should think, is—to see whether, on constitutional questions affecting the whole of the country, it was possible to arrive at a maximum amount of agreement. I have not the least doubt that, if the task of drawing up a constitution for India could be entrusted to any one of us, each one of us could give a complete constitution within 24 hours or less. But that would not represent the maximum amount of agreement. Nor do I think, in a Conference of this character, where we are sitting exclusively and expressly with the object of exploring our views for arriving at a common agreement, that there is much room for ultimatums or mandates or solicitors' notices. If there are differences which divide us, those differences must be solved. If there are different points of view which have got to be reconciled, they must be reconciled. We are not here, I fancy, to go back upon decisions which we arrived at last year—tentatively, no doubt, but with the distinct feeling in our minds that we owed it to ourselves and owed it to the country that, so far as possible, we would strive to bring into existence what I imagine to be a greater India. That is the whole object that we had last year in view, and that is the object that I think we have in view this year.

Now, My Lord, these being the conditions of the problem which we have to attack when dealing with the question of a federation with the Indian States, there are just a few facts which it is necessary to bear in mind in dealing with these questions. We are providing, or seeking to provide, a constitution for a country consisting of something like 350,000,000 people. Out of these 350,000,000 there are something like 80,000,000 in the States. If I am wrong in my figures, I hope I shall be corrected. We have also got to reconcile the claims of a Federation with the claims of Their Highnesses to sovereignty. Now, let me assure Their Highnesses—which I think it is perfectly unnecessary for me to do at this stage—that, so far as we on this side are concerned, we have never conceived any designs upon their sovereignty. On the contrary, we have always conceded and gladly recognised that, in regard to their internal autonomy, their sovereignty shall remain unaffected in the slightest degree. Therefore, what I venture to remind Their Highnesses is that it seems to me, if I may respectfully say so, perfectly superfluous at this hour of the day to remind us of Their Highnesses' claim to be sovereign Princes, and that they are anxious to preserve their sovereignty.

H.H. The Maharaja of Bikaner: Some others who were not here.

Sir Tej Bahadur Sapru: Very well. But it is obvious that, to the extent to which Their Highnesses agree to come into the Federation, there will be a derogation of their sovereignty to the new State which will come into existence, namely, the Federal State of India; and I would beg Their Highnesses, and particularly His Highness The Maharaj Rana of Dholpur, to remember that the Federation which will come into existence will not be a Government of British India. It will be as much your Government as it

will be ours. You will not then be dealing with an outside agency; you will be dealing with an agency or with a Government which you can as legitimately claim to be yours as we can legitimately claim it to be ours. The decisions will be common decisions. The decisions will be arrived at upon a mutual exchange of opinion between the representatives of British India and the Indian States. Therefore, let there be no such feeling that British India is trying to scheme itself into a position of superiority over the Indian States. I wish to say these things at this juncture because, to be absolutely frank, I have discovered a sort of under-current or a suggestion to that effect. Let me tell you that that is entirely absent from our minds.

Now, we have all had the pleasure of hearing His Highness The Maharaj Rana of Dholpur to-day. We feel that we have not had the advantage of having the scheme associated with his name placed before us. We wish it had been circulated to us. In the few observations that I shall make now I shall bear in mind the remarks which fell from His Highness The Maharaj Rana this morning. He has justly spoken of a Union of Indian States to precede the Federation. I should like, in all humility, to put a few questions—not by way necessarily of criticism, but in the expectation that, at some time or another, a reply will be forthcoming to them.

First of all, we on this side are entitled to know what is the strength of feeling behind that idea of confederation. How many of the Indian States out of the 125, or out of the 600 odd to which exception has been taken by His Highness of Bikaner, are committed to it? Then I should respectfully like to know within what reasonable distance of time do the authors of that scheme expect that the idea of confederation will materialise. Also I should like to know what is to happen during that interval. Again, I should like to know whether they seriously think that it is to the advantage of the Federation that we contemplate, or whether it is to the advantage of British India or whether it is to the advantage of the Indian States, that two units should be ranged into opposite camps in a common Federation—British India claiming to have its own mandate and Indian India claiming to have its own mandate; and who is going to solve the problem when each section is going to have its own mandate thrust at the other. I should also like to know whether it has been seriously considered if this electoral college will at all be a workable and feasible scheme; whether the Indian States, big or small, will feel satisfied that the task which they ought to perform themselves in their individual capacity should be performed for them by a collective body like the Chamber of Princes. If they will feel satisfied, then I wish to ask them in all humility—and it is not for me to answer, it is for Their Highnesses to answer—what becomes of their sovereignty, to which they attach so much importance. They will be imposing upon themselves a super-sovereign in the person of the Chamber of Princes. Let me give them that warning. I will not deal with this question further. If His Highness of Bikaner, or

His Highness of Baroda, or His Highness of Indore, or His Highness the Chancellor, do contemplate with equanimity the Chamber of Princes legislating for them on " Central " subjects, then I wish them joy of it in all humility.

These are some of the ideas that strike me as arising out of the speech and out of the scheme suggested by His Highness The Maharaj Rana of Dholpur. Frankly, I would have liked that scheme to have been circulated. I have my own point of view about it, but I will approach the scheme with the respect that is due to His Highness The Maharaj Rana of Dholpur and his other associates. I will approach it with an open mind; but I do give a warning—and I hope I shall not be misunderstood—that the scheme suggested by His Highness The Maharaj Rana of Dholpur is not one which will facilitate the creation of the Federation which we have in view. I will not take more time over this subject.

Yesterday, His Highness The Chief Sahib of Sangli put forward the views of the smaller States. If His Highness will permit me to congratulate him on the speech which he made yesterday, I will do so with the greatest pleasure; and I venture to give him the assurance that nothing is further from the minds of us all on this side than that, in this confederation, the smaller Indian States should not receive their due and proper share. How that will be done is another question. We are all anxious that the Federation which we are trying to bring into existence shall be as wide and as complete as it possibly can be under the circumstances. At the same time, I am aware that the constitution which we are evolving is not by any means perfect, and is not going to be perfect for some time to come. But may I respectfully ask what constitution is there in the world about which it can be claimed that it is perfect in all respects? A constitution is like a living organism; it must grow. It must grow in the light of experience, in the light of new knowledge, and in the light of new circumstances which must arise. Therefore I will make an appeal to both sides of the House that, if there are certain features of the constitution which do not strike one as being perfect either from a purely democratic point of view or from the point of view of the Indian States, let us not aim at too much. Perfection will come in course of time; but, meanwhile, our aim ought to be to get a working constitution with which we can make a good start.

Now, My Lord, there are just two or three essential propositions which require consideration. One argument which has been put forward on the other side of the House by Their Highnesses is that, in the case of a federation, there must be perfect equality between state and state. I will beg Their Highnesses to consider what exactly is meant by " equality " of a state in a federation; and I will venture to say, with great respect, that it is not necessarily a part of, or a basic element of, a federation, everywhere in the world that there must be equality of representation. There are federations in which there is equality of representation. There are other federations in which there is inequality of representation.

We have been constantly reminded of the United States of America. There were historical reasons existing at the time of the American Revolution which compelled the American States, big and small, to adopt the system of equality of representation. On the other hand, there are federations, quite as important as the American, where there is inequality of representation. Let me remind Their Highnesses of one federation which it is quite fashionable to mention on the other side, namely the German Federation—the Bundesrat which we have heard so much about. I will not say anything in my own language, but I will just read a small passage from a standard book on the German Constitution. Mr. Oppenheimer says:—

> "The vast difference between the German States in area and population, in wealth and in power, a difference unequalled in any other federal state, rendered it impossible to reduce, for instance, Prussia and Schaumburg-Lippe to a common factor, and had already in the German Confederacy caused the logic of international law to succumb to the logic of facts. The Bismarckian Constitution had adopted, with but slight variations, the distribution of votes in the old Bundestag, and its republican successor has changed the principle, but not to a vast extent the practical result, when introducing the test of population. From the latter there are, however, two deviations:—
>
> (1) Each State, even the smallest one—and the smallest one has less than 50,000 inhabitants—is given at least one vote, a clear concession to the federal principle;
>
> (2) No single state may have more than two-fifths of the total votes."

Therefore, My Lord, I think that it cannot be predicated that there must be equality of votes. It is perfectly true that the political status of each single unit of the Federation will be equal to that of the others. At the same time, while I hold that equality of representation is not the necessary ingredient of federation, I also hold that, in the peculiar circumstances of India existing as they are, and in view of the great experiment that Their Highnesses have agreed to try in a spirit of confidence and co-operation with us, they are entitled, so far as the Upper House is concerned, to a certain amount of weightage. I maintained that view last year, and nothing that has passed since last year has convinced me that the view which I took last year was wrong.

H.H. The Nawab of Bhopal: Sir Tej said something about Prussia. Was it not the case that Prussia had 17 votes out of the 51 votes?

Sir Tej Bahadur Sapru: In the old constitution, yes. I am talking of the new one. Even in the old one there was not equal representation. That was the point I was making.

H.H. The Nawab of Bhopal: I only wanted to point out that in Prussia, under the old constitution, they had 17 votes out of the 51, as I understand. Can Sir Tej confirm that?

Sir Tej Bahadur Sapru: I do not exactly remember, but Prussia predominated. I can verify that, Your Highness is quite right that Prussia was predominant.

H.H. The Nawab of Bhopal: And Prussia's interests were two-thirds.

Sir Tej Bahadur Sapru: Yes. The point, Your Highness, that I was making, was that there was not equal representation of all States. There was not equality.

H.H. The Nawab of Bhopal: I would not have interrupted you, but I only wanted to make out that Prussia, the biggest part, had only 17 against one-third having about 34. That was my only point.

(At this point Lord Sankey left the Chair, which was taken by Lord Lothian.)

Sir Tej Bahadur Sapru: You are right, Your Highness, Prussia had a total of 17 out of the 51. I have just seen the book.

Now, I will just say that, in view of the peculiar circumstances of India, and of the great experiment that is going to be tried, and particularly in view of the fact that in the Upper House the States must be represented, I think the Indian States are in fairness entitled to a weightage. What exactly that weightage will be is a different question. Their Highnesses have asked for 50/50 representation. I would beg them to bear in mind that while we, on this side, would be very willing and very glad to follow the advice which Mahatma Gandhi gave us on the first day—namely, that we should make it easy for Your Highnesses to come into the Federation—we should also like Your Highnesses to make it easy for us to accept the Federation and to carry with us opinion in British India. For this reason it was that I ventured to suggest last year that Your Highnesses should accept 40 per cent. of the representation in the Upper House and I was glad that yesterday Mr. Sastri took exactly the same view. Therefore I take it that, so far as representation in the Upper House is concerned, it is capable of adjustment. It is not one of those rocks on which we can wreck the ship. I was a little amused yesterday when I found opposition to the weightage of the Indian States from my friends Dr. Shafa'at Ahmad Khan and Mr. Zafrullah Khan.

Dr. Shafa'at Ahmad Khan: May I just say that, when I was speaking on the quantum of representation, I was speaking on behalf of the whole group here?

Sir Tej Bahadur Sapru: I thought the objection was to weightage, to the very principle of weightage; and I thought the position was that the representation must be on a strict population basis. It came to me as a surprise that my friends over there should have lost faith in weightage. Frankly, I am one of those men

who have always asked for weightage—I have no objection to it at all. But while it was being argued that the Indian States should not have weightage in the Upper House, I wondered where that argument would lead to in another committee. I will not say anything more with regard to that.

Mr. Jinnah: I think that is not quite the correct representation of our position.

Sir Tej Bahadur Sapru: I should like you to correct it.

Mr. Zafrullah Khan: Sir Tej Bahadur Sapru has neither paid me the compliment of listening to my speech nor paid me the compliment of reading a copy of it.

Dr. Shafa'at Ahmad Khan: And I say the same.

Sir Tej Bahadur Sapru: I should like to be corrected.

Mr. Jinnah: Yes, if you like. The correct position is this. We do not say that in no circumstances is a party entitled to claim weightage. The view that we take is this, that having regard to the fact that the Indian States are coming in only for certain specific matters which are of such negligible quantity for the purpose of an all-India Federation, and having regard to their stake, they do not need weightage. After all, what is the weightage for? The weightage is for the purpose of protecting the interests of a party. What is the interest of the Indian States which will not be protected if they are given representation without weightage? I see no ground that has been put forward yet which can convince us that their interests will be jeopardised unless they get weightage. That is the reason why we say we are not satisfied up to the present moment with any reason which has been put forward for giving them weightage.

Sir Tej Bahadur Sapru: Then I take it, Mr. Jinnah, that you are not opposed to the principle of weightage.

Mr. Jinnah: I am certainly not opposed to it, but the point is this, Sir Tej. I have not yet heard a single argument which would satisfy me that weightage should be given to the Princes as a safeguard because their interests will be in jeopardy or danger. That is the point.

Mr. Zafrullah Khan: With Sir Tej Bahadur Sapru's indulgence and Your Lordship's, may I just draw attention to two very brief extracts from my speech yesterday, in order to emphasise on what grounds I put forward the suggestion for the consideration of Their Highnesses. Those are these:—

> "The Federal Structure sub-Committee has made a recommendation . . . . that the federating Units will be the Indian States or groups of States on one side and British Provinces on the other. Therefore, as I submitted in my very first speech in this Committee, there will be no question of preponderance of any Unit in this Federation. But let us go further than this theory and let us look at actualities for a moment. I realise that if British India were coming

into the Federation as one Unit—if British India as one entity had common interests which might under some possible circumstances come into clash with the common interests of the States among themselves—if British India had one separate culture and the States another—if British India were inhabited by one race and the States by another race—if the people of British India were the adherents of one faith and the people of the Indian States of another faith—if there were any such cleavage or division between British India as a whole on the one side and the Indian States as a whole on the other—these would have been the strongest reasons for Their Highnesses insisting that, being the smaller partner in the Federation, they should be "given a certain amount of weightage; and that would have been met generously on the side of British India. But, happily, there is no such difference. As Their Highnesses have themselves said, very often the division of interests and the question of voting will be decided on the ground of regional distribution rather than on the question of the yellow or the red colour on the map."

"That being so, my submission is that, having regard to the fact that matters that are of supreme importance to the States and are peculiar to them are being excluded from the Federation—the Federation relating only to certain matters of common interest between Indian India and British India, and also including the policy, legislation and administration of certain subjects that are entirely British Indian subjects—I would beg Their Highnesses to reconsider this question of weightage."

Sir Tej Bahadur Sapru: I can assure Mr. Zafrullah Khan that I listened to his speech with the utmost possible respect, and this whole paragraph was present to my mind. It may be my misfortune that I do not agree with him.

Mr. Zafrullah Khan: Yes, I think that is so.

Sir Tej Bahadur Sapru: But I should not like to plead guilty to the charge that I did not pay sufficient respect or attention to his speech.

Mr. Zafrullah Khan: You said I had given up the question of weightage.

Colonel Haksar: I do not want to interrupt Sir Tej Bahadur Sapru at this stage; but might I beg that note be taken of the fact that, later, when you are in a position to allow me, I should like to refer to Mr. Jinnah's remarks, particularly the remark that the quantum of the proposed Federal scheme, viewed from the point of view of the States, is so negligible that they have no interests to guard?

Sir Tej Bahadur Sapru: I do suggest that the Indian States are most vitally interested in matters which produce revenue, in

matters which affect their exchequer, and in matters which affect their subjects. I suggest that, so long as there are matters like Customs and Railways, and things of that kind, which produce revenue, and which affect large tracts of territory in British India and the Indian States, they are entitled to see that their views are put forward adequately and by a sufficient number of representatives. On that principle I do suggest that it would be right and fair that they should get some weightage in the Upper House. That this is so will appear from the fact that, even in America, the test which has been adopted is not merely the population basis for the Upper House. I will only refer to the population of a few out of 48 of the States. For instance, the population of Massachusetts, New York, Pennsylvania, Missouri and Delaware varies very much, and yet they have been given an equal amount of representation, which in the case of the small States means a weightage.

Mr. Jinnah: It is a very different federation from that which we are contemplating.

Sir Tej Bahadur Sapru: Similarly, in Canada, the Maritime Provinces are small in numbers and have weightage. I can give other instances. Therefore, I say that, so far as the Upper House is concerned, there is to my mind a good case for a weightage being given to them. Mr. Sastri suggested yesterday, and I repeat the suggestion, that Their Highnesses should agree to a 40 per cent. representation in the Upper House.

When I come down to the Lower House there are different considerations which apply. So far as the Lower House is concerned, I would beg to remind Their Highnesses that the position which we on this side have taken is that they must take certain steps to give a voice to their Legislatures where there are Legislatures, or to secure the popular representation of their subjects. There I would like to ask Their Highnesses why is it that they want a weightage in the Lower House? For whose benefit is it, and in whose interest? After all, when you bear in mind that there is going to be a provision for a Joint Session of the two Houses whenever there is a conflict within the two Houses on any material question, there does not seem to me to be any valid reason for weightage so far as the Lower House is concerned.

Coming then to the strength of the two Houses, a variety of opinion has been expressed at this session. It has been suggested in certain quarters that the interests of economy required that the Houses should be very small. On the other hand, it was suggested that, from a purely democratic point of view, it is necessary to try to secure representation of different interests, and that, therefore, the Houses must be very much larger. I would remind you of what was the recommendation of the Nehru Committee Report. So far as the Nehru Committee Report is concerned, it must be borne in mind that the authors of that Report had nothing to do with a federation such as we are now trying to contemplate. We were at that time thinking of a federated constitution for British

India alone, and we recommended at that time that, so far as the Lower House was concerned, its strength should be 500, and that, so far as the Senate was concerned, its strength should be 200. Now that the Indian States are going to come in, as I hope they will, it is necessary for us to bear in mind that fact. While I like to secure efficiency in the Government, I do not think that efficiency in the Government can be very much affected by the existence of a larger Legislature. Therefore, the conclusion at which I have arrived is that, so far as the Upper House is concerned, its strength must be raised from 200 to some other reasonable figure. Whether it will be 250 or more than 250 is a question which will depend upon whether Their Highnesses agree to our suggestion that they should accept 40 per cent. representation. What I would suggest to Their Highnesses is that it would be for them to say what is the minimum number of representatives of their States in the Upper House which will satisfy their need. I believe that His Highness The Maharaja of Bikaner said this morning that 125 is the minimum number which will satisfy them. His Highness The Chief Sahib of Sangli suggested yesterday (if I am wrong he will correct me) that it must be 150. The difference between the two figures is not very much. I fancy that the whole basic idea of these suggestions is that there should be representation for all the bigger States and that the small States should be grouped together and brought into the House in that way. Speaking for myself, I would say that, so long as you have that percentage, 40 to 60, I would not object to a Senate of 250, or 300, or a little over 300.

Sir Akbar Hydari: I want to ask one small question. In the Nehru Report, was it contemplated that the Central Legislature should have only the subjects which we are now federalising, or were there many more?

Sir Tej Bahadur Sapru: It was all of them. They were Federal subjects, and there were many more. When the schedules of the Central Government and the Provincial Governments were drawn up in the Nehru Committee Report, there was no such question then as there is now. We had only Central subjects, or you might call them Federal subjects. We have here at this Conference, Provincial subjects, what you might call State subjects, then the Federal subjects, and then the Central subjects.

Sir Akbar Hydari: My remarks have been all along directed to the words "Legislature for Federal subjects." I only want to point out that, if the Nehru Report wanted 500 and 200, it was for Central subjects. That is my point. I mean I simply wanted to see whether I was correct in thinking that.

Sir Tej Bahadur Sapru: Surely Sir Akbar Hydari does not suggest that there should be a separate Legislature for Central subjects?

Sir Akbar Hydari: No. I am at present not at all concerned with that. All that I am concerned with is the Federal Legislature, into which the Indian States come, which is seized of Federal

subjects. And I only want to point out that, for the administration or the consideration of those subjects, perhaps a number so large as was contemplated by the Nehru Report, when they were seeking to frame a Legislature and a unitary kind of government, would not be required. That is all my point.

Sir Tej Bahadur Sapru: Sir Akbar, what I would say is this. You would be carrying with you this side of the Committee if you could persuade your friends of the Indian States to agree to every subject being a Federal subject. That is my answer. We will not have the slightest objection to that suggestion of yours; but it is not for me to answer that question—it is for Their Highnesses to answer.

Sir Akbar Hydari: I do not think you will find much difficulty in getting the Indian States to agree to have as many subjects as possible going to the Provinces and a certain number remaining with the Centre; and in that they come in.

Sir Tej Bahadur Sapru: I have had the honour of knowing that view for some time, but I have anxiously waited to have a pronouncement on that subject from Their Highnesses there. What I would say is this—that so long as we have a Federal list, and so long as we have a Central list, we have got to provide for both, considering that there is going to be one single Legislature for both.

Sir Akbar Hydari: Quite so; but if the Central list is very much denuded, it will be very much less than the Central list at present.

Sir Tej Bahadur Sapru: I would beg Sir Akbar Hydari not to forget that he is also a British Indian; and if he were not in Hyderabad but were living in Bombay, he would feel much more interested in the Central subjects than he would in the Federal subjects. And from that point of view, democratic sentiment in India will not be satisfied, let me tell him, with a very small Legislature. Those two or three subjects in the Centre appeal more to popular interest than the dry subjects of the Customs and Railways, which require technical knowledge. It is for that reason that I say I agree with the suggestion of Mr. Sastri that the Lower House might be anywhere in the neighbourhood of 400 to 450. That is really a compromise between the two views which have been put forward from that side of the House and from this side of the House. I believe Their Highnesses suggested a Lower House of 300 or 350.

H.H. The Maharaja of Bikaner: 350.

Sir Tej Bahadur Sapru: 350—whereas Mr. Joshi suggested 600 to 700, and Mr. Sastri suggested 400 to 450. I suggest to Your Highnesses and all my colleagues here that we might come to a settlement on that figure, accepting the suggestion of Mr. Sastri.

Sardar Ujjal Singh: Would you have a Lower House of 400 even if you have an Upper House of 350 members?

Sir Sultan Ahmed: Two questions will have to be answered: first, with regard to the heavy expenditure; and, secondly, whether it will be possible, in view of the large part you are giving to the Provinces, to find a sufficiently large number of good and suitable men.

Sir Tej Bahadur Sapru: I will answer those two questions immediately. So far as finding a sufficient number of men in the country is concerned, I should not despair of finding one able man among one million men. Within 350,000,000 men, I do not think it is impossible, but I think it is very probable, that you can find at least one man among a million men who will be fit to sit in the Upper Chamber. So far as the question of economy of expenditure is concerned, that will have to be very carefully examined. But, with all respect to my friend, Sir Sayed Sultan Ahmed, and with all respect to Mahatma Gandhi, there is one word of caution that I would like to utter there. Experience in other countries has proved that democratic constitutions are much more expensive than bureaucratic constitutions. I mean, if there are any among us who think that, by adopting a democratic constitution, we are going to economise, let me tell them frankly that they are living in a paradise of their own. I will not use the ordinary expression! Party organisations will spring up; party funds will have to be brought into existence; all the machinery and paraphernalia of Western constitutions will have to be brought into existence before we can cope with our responsibility. Even though the salaries of the Services might be reduced to Rs. 500, even though a maximum amount of income might be prescribed for lawyers like Mr. Jinnah, still Mahatma Gandhi will have to face this problem, that he will have to find the funds to meet the requirements of the democratic constitution.

Mr. Gandhi: No, I shall presently seek shelter in Bikaner or Porbandar!

H.H. The Maharaja of Bikaner: You will be welcome there; we shall be honoured!

Sir Tej Bahadur Sapru: Now, there are only two more questions of importance which remain for me to deal with, and after that I shall be silent. One question of considerable importance which has been raised, and on which there has been a difference of opinion, is as to whether the quota which is to be assigned to Their Highnesses or to the Indian States is to be given to only such of the States as may join the Federation at its commencement, or as to whether the States that join shall get only a *pro rata* share. I am quite aware that there are important considerations on both sides. On the one side, there is undoubtedly the feeling among the Indian States that, if only say 30 or 40 of them join, they will be in a great minority. On the other hand, there is this feeling among us on this side of the Committee—that if the whole of the quota is to be assigned to such of the States as prefer to join at this time, it will be putting a premium upon abstention so far as the

other States are concerned. They may not like to come in at all, or they may like to come in after ten years or fifteen years; and, meanwhile, the few States which may join will exercise votes considerably larger in number than they should be entitled to having regard to the proportionate share that ought to go to them. For this reason, I would suggest, so far as the States which join are concerned, they must get their proper share. So far as the rest of the seats are concerned, they must remain vacant. If Their Highnesses are anxious to have safeguards to protect their own interests, I will beg of them to think of other lines of progress in that direction. But I do not think that, so far as British India is concerned, it will very readily agree to the whole of the quota being assigned only to two or three or four or five States which may decide to join.

Then, it was suggested yesterday and also to-day that, for the bringing into existence of this Federation, it will not be enough to have 51 per cent. of the Indian States or 51 per cent. of the population of the Indian States represented in the Federation. Well, I should have liked to have been given a definite figure which would have suited the views of Sir Samuel Hoare on one side, or of His Highness The Maharaja of Bikaner on the other. But that has not been done.

H.H. The Maharaja of Bikaner: They are not mine; they are the Delegation's views.

Sir Tej Bahadur Sapru: But my submission on that point is really this. It is premature to consider that question. Let the picture be completed. Let Your Highnesses be satisfied that the Federation is well worthy of your support; and if you come to the conclusion that the Federation is worthy of your support, then, to my mind, this question will be of more or less academic interest, because, for aught we know to the contrary, 75 per cent. of the Indian States, as Your Highness ventured to prophesy to the Conference last year, may come in.

H.H. The Maharaja of Bikaner: I still hold that view.

Sir Tej Bahadur Sapru: Then, as far as that question is concerned, I would like to wait before giving a final reply.

There is another question which has been raised, in which we British Indians are only indirectly interested, but in which, I must confess, we are interested; and that is the question which affects your internal relations and adjustments. On the one hand, it has been suggested by Sir Mirza Ismail and by Sir Akbar Hydari that, in the event of Your Highnesses refusing to come to an agreement (and I believe that Your Highnesses share that common weakness with us on this side), the decision must be left to an independent committee on which no partisan shall be represented. That was the view, I believe, of Sir Mirza. On the other hand, Your Highness read this morning a resolution passed by your Conference at Bombay, which, to my mind, more or less runs on the same lines.

H.H. The Nawab of Bhopal: It was passed by the States' Delegation.

Sir Mirza Ismail: Sir Tej, I did not say that, in the event of no settlement being arrived at among the States themselves, the decision must be left to an independent committee. I did not mean that. I meant that no attempt should be made to settle anything.

Sir Tej Bahadur Sapru: That is, after all, a matter relating to method and to machinery; and, so far as that point is concerned, subject to one important condition in which we are interested—namely, that the smaller Indian States shall be adequately represented—we will leave it to Your Highnesses to settle among yourselves. The best machinery that you can devise, you will devise. That is a matter for Your Highnesses, so long as we can come to a settlement on the main question as to what shall be your share and as to what shall be our share. These are the various questions to which I wanted to reply.

Before concluding, I will venture to express one hope; and it is this. Difficulties are bound to arise in our way. There has not been a conference where critical situations have not arisen. I need scarcely refer to such critical situations in the presence of Lord Lothian or of Mr. Wedgwood Benn; they are more familiar with critical situations arising in International Conferences. Nevertheless, they have approached their task in an indomitable spirit; and I will venture to say to Their Highnesses that we are so strongly committed to this idea of federation that, in my opinion, it will be betraying our trust if, on small, trifling points, we are not able to accommodate each other. The real thing is to get into existence this Federation. The task of perfection we should leave to the future.

H.H. The Nawab of Bhopal: My Lord, May I make a statement? I do not want to comment one way or another on His Highness of Dholpur's scheme, because we are going to consider that among ourselves in our Delegation. His Highness referred to a questionnaire which had been issued by me, as Chancellor of the Chamber of Princes, to all the States. I think perhaps the figures will be helpful to this Conference, and I wish to have them recorded. The questionnaire was issued to 180 States belonging to the Chamber. Out of these, Hyderabad, Kashmir, Baroda, Gwalior, Nawanagar and Mysore, who are members of the Delegation, have not replied, but have expressed their views already in favour of federation. The States of Travancore, Rewa, Suket, Bharatpur and Kishengarh have not replied because, they say, they will await the complete picture before they give any opinion. In spite of the fact that only 15 days' time was given for the replies, 70 States have supported the Sankey scheme in principle, subject to their final confirmation and consent when the picture is complete; but they have expressed certain views in regard to details which are now being put forward from day to day by their representatives who are here. The States which did not reply have expressed their

regrets for not having done so owing to the shortness of time. Replies from those members of the Chamber who are members of that body in their representative capacity have generally agreed with the principle outlined in the Sankey scheme.

(The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.)

Head 4.

Distribution of Financial Resources between the Federation and its Units.

The following points for discussion in connection with this Head were drafted by the Chairman:—

(i) *Is there to be a "Central" Budget distinct from the "Federal" Budget?*

(ii) *Is Public Debt*—(a) *past*, (b) *future—to be separated into "Federal" and "Central," and on what revenues is it to be charged?*

(iii) *How are the revenues and expenditure of the British Indian Provinces which are not Governors' Provinces to be treated?*

(iv) *What are to be the respective fields of taxation of the Federal and Provincial Governments? How far would it be feasible to assign only "indirect" taxation to the former and only "direct" taxation to the latter?*

(v) *To whom and for what purposes are the proceeds of Income-Tax in British India to be credited?*

(vi) *To what extent, if at all, will Federation necessitate surrender, by federating States, of rights to raise revenue within their territories, at any rate by "indirect" taxation* —(a) *as regards existing taxes;* (b) *future taxes?*

(vii) *Under Federation, will there remain any foundation for a general claim on the part of the States to a share of "indirect" taxation imposed by the Federal Government, or to any profits accruing from Currency, Railways, Posts and Telegraphs, etc.?*

(viii) *What principles should be applied in the case of* (a) *financial or material contributions made by some States, but by no British Indian Province, viz., cash payments, State Forces and territories ceded as the price of defence; and* (b) *States which at present enjoy a measure of immunity from the incidence of the Sea Customs tariff and the Salt tax?*

(ix) *Should the Federal Government have any control over Provincial borrowings? Should there be a Federal Loans Fund?*

(x) *Should Provincial Balances be kept with the Federal Government pending the establishment of a Reserve Bank?*

Preliminary Discussion.

Chairman: Your Highnesses and Gentlemen, We have now come to the question of Federal finance. It was not to be expected that at its first Session, the Conference would attempt to formulate any comprehensive scheme of Federal finance. Apart from the fact that this could only be done by an expert body, the main preoccupation of the Conference on the last occasion was to settle provisionally the political foundations of Federation, and the financial aspect of the problem was only touched upon incidentally. The importance, however, of devising an equitable scheme of Federal finance can scarcely be exaggerated; for whatever form of constitution be decided upon, its success in actual working must largely depend upon two conditions: the first, that in the constitution the financial relations between the component parts of the Federation are precisely and wisely defined; and the second, that the aggregate resources, actual and potential, are quitably distributed, so that, if practicable, neither the Federal Government nor any of the Governors' Provinces will at the outset be unable to make ends meet.

I need not remind you that finance, at the present moment, is difficult for everybody, and one has to be extremely careful to do what is best in an exceptional emergency. This involves not only the formulation of financial provisions to be embodied in the constitution, but also an adjustment as between the Federal Government and the Units of the resources of the Federation.

I think you are wise to have decided that, in the first instance, after we have had a general debate upon the subject, this should be examined by the sub-Committee, whose recommendations you can review should you feel so disposed. With regard to that sub-Committee, I am very much obliged for the suggestions I have had with regard to it; but I want to say this, that of course any group and any individual is entitled to have his expert adviser there. It is a subject on which you must all have expert advisers, and you will be perfectly free to have anybody you like to advise you. To avoid misunderstanding, it should, at the outset, be made clear that the matters dealt with are not directly connected with the question of financial safeguards, but are rather matters of domestic concern, affecting the internal relations between the Federal Government and the Units of the Federation. Particularly, I would ask you to consider—and the sub-Committee when it is formed, to consider—this: whether we are to base the financial system upon the assumption that the Provinces are granted the greatest possible measure of self-government. I will repeat that, because it is very important: are we to base the financial system upon the assumption that the Provinces are granted the greatest possible measure of self-government?

Sir Provash Chunder Mitter: My Lord Chancellor, I consider it a great honour to be called upon to open the debate upon the important subject before us. Believe me when I say that I wish

the task had been entrusted to somebody abler and more experienced than I can claim to be. But when you asked me yesterday afternoon to take up this subject, I felt that it was incumbent upon me to accept this call of duty, however ill-equipped I might be, and however short the time at my disposal for the preparation of an important subject like this. I might add, My Lord, that a call from you was irresistible. You have taken so much interest, and, if I may say so, have devoted so much labour to solving this very difficult and intricate problem of federation of a type unknown to the world at present, but which I hope in the future will be known as one of the best types. But for your assistance, I am sure we would not have been able to make that progress on the political aspects of the problem which we have made; and I hope and trust, Sir, that with your assistance, we shall make similar progress on the financial aspects which are all-important.

The main head which is before us for discussion is the distribution of financial resources between the Federation and its Units. Keeping this main head before me, I shall try to confine my remarks to general questions which arise therefrom. I would, at this stage, make only general observations which seem to me to be necessary in order to focus our attention on the essential points. We are entering upon a Federation on certain specified subjects. The Units of Federation will be federated British India on the one hand, and a number of Indian States—and I hope all the Indian States—on the other. We have been authoritatively told by His Highness of Bikaner, as representing the Order of Indian Princes, that the Indian States are not willing to agree to the imposition of any " direct " taxation on their subjects. That is a very important point which we must constantly keep before us; and, in discussing the problems before us, we must not, therefore, be led into a too slavish imitation of other federal constitutions. As we are federating, we of British India and they of the Indian States must try to realise each other's difficulties, and must at the same time take note of the realities of the position.

The next matter to which I would draw the attention of the Committee is the list of Federal subjects set out at page 10 of the Report of the sub-Committee; and in this I may anticipate another point, namely, the position of the Federal Executive with regard to " Central " subjects, by referring to the lists set out at page 28. An examination of these lists will show that the administrative expenses of purely " Central " subjects are not much; but the purely " Central " subjects are subjects of the utmost importance to British India, because they concern items like civil law, criminal law, the penal code, and so on. The administrative expenses of the present Government of India are mostly to be handed over to the Federal Government and the Federal Legislature of the future. I say " mostly " because there are items which are not to be handed over.

It has been suggested that a suitable sub-Committee should be appointed to investigate the subject under discussion. I am of opinion that this is an eminently wise suggestion, as it will be necessary to investigate many facts and many figures before we can hope to come to a proper decision. In order that the sub-Committee may do its work properly, we are only concerned in this discussion in giving a sort of lead to it. We are not even called upon to formulate the terms of reference, but simply to discuss the matter amongst ourselves in order to show what is in our minds, so that the sub-Committee may work out the details on the lines and indications of the discussion which takes place here. Therefore I do not propose to enter too much into facts, or even into details, except at a later stage for the purpose of elucidating and explaining some of the suggestions I propose to make; and even there I do not think it will be right to go into many details.

There are two fundamental points which we must keep in view in deciding on the financial position of the future. One is that the Federal Government should have adequate and sufficient resources to discharge the duties cast upon it—and some of those duties are very important. The other is that, subject to the provision of such resources to the Federal Government for discharging the duties cast upon it, as much as possible should be set free to meet the requirements of the different Provincial Governments. The duties cast on the Provincial Governments are, in all conscience, of the utmost importance. On the adequate discharge of the duties and responsibilities cast on the Provincial Governments lies the future welfare of the teeming millions of India. Mahatma Gandhi told us the other day that ninety per cent. of the population live in 7 lakhs of villages. Unless those governments whose duty it is to improve the moral, the material, the educational and the economic position of these teeming millions are given adequate resources, self-government will be a mere mirage. It is for that reason I say that, subject to the essential needs of discharging the duties cast upon the Federal Government, every effort must be made—not because of any Provincial standpoint but because of the all-India standpoint—to leave as much of the resources as possible to the Provincial Governments. And may I add that, even from the mere mundane point of view of the Federal Government—even from the point of view of rupees, annas and pies—if the human unit in the Indian nation is economically stronger, then your Customs revenue will be larger. If the human unit in the Indian nation is better off, then the acute problem of the unemployment of the middle classes, and particularly the poorer middle classes, will be more easy of solution. Your Income-tax revenue will improve. Your buying power, generally speaking, will improve. Therefore, even from that point of view, do not forget to leave as much as you can to the Provincial Governments.

Now, Sir, I will refer to some general questions, which I may almost describe as questions of general principle; and I would say that we have to divide our problem into two parts—one, what I

may refer to as the intermediate period—because the Federal Government is going to take up many of the duties cast upon the present Government of India. The present Government of India has not only the sources of revenue which will be available to the Federal Government, but it has other sources of revenue which close examination will show ought not to be available to the Federal Government. In the intermediate period, however, some of the sources of revenue which are at the present moment available to the Government of India should, to a certain extent, be made available to the Federal Government. I refer specially to the question of Income-tax. On the question of Income-tax, Their Highnesses have made it abundantly clear that they are not willing to impose Income-tax on their States or on their subjects. Therefore that is a " direct " tax, which is available to the Government of India at the present moment, which, on *a priori* grounds, ought not to be available to the Federal Government unless all the federating Units are willing to impose a similar tax. There will be certain expenses. Those expenses we may not be able to meet fully merely from those heads of our existing resources which will be made Federal. Therefore, I suggest that, for this intermediate period, a portion of the Income-tax should be made available to the future Federal Government; but after the intermediate period is over, the Federal sources of revenue should be sources common to British India and to the Indian States, and there, I believe, I am on common ground with Their Highnesses.

I have said that there should be an intermediate period during which " direct " taxation from British India, in the shape of Income-tax, will be partly available. I am in favour of fixing a time limit to that intermediate period, or else there will be a tendency to look too much to that source—or else, if there be any mismanagement of the Federal subjects of administration, the true responsibility will not be cast on the Federal Government. And not only would I fix a time limit, but I would fix a limit in the shape of a percentage as to the extent of the Income-tax which will be available to the Federal Government during this intermediate period. In fixing this time limit, however, we should keep in view a point like our debt obligations, and should agree to pay a rateable share of our unproductive debt. After this time limit, no portion of the " Central " sources of revenue, such as Income-tax, should be available to the Federal Government, unless the Indian States at that period agree to some other source which will be an equivalent portion of what British India will directly contribute. For this intermediate period, I suggest that half of the total Income-tax will not be unfair, and the intermediate period I propose we should aim at making ten years. But these details can be better settled in the sub-Committee, and after investigation of figures and expenses.

In dealing with our discussions on the political aspect of the question, some of my colleagues have said that we should aim at

the future, when there will be no " Central " subjects, or as few " Central " subjects as possible. I agree with that observation; but at the present moment we have " Central " subjects, including some " Central " subjects of the utmost importance to which I have referred. Those " Central " subjects, however, are subjects which are mainly concerned with legislation—mainly concerned with laying down a certain standard of administration. They are not mainly concerned with large heads of expenditure. This fact seems to me to be important. Supposing all the Provinces agree to have a unified type of administration, say, with regard to Audit or with regard to the High Courts. I am expressing no opinion on the merits. I am referring to these two points merely for purposes of illustration. I know that, at the present moment, the suggestion is that Audit would be a Provincial subject, so far as the Provinces are concerned; but supposing that we in our wisdom —by " we " I mean the public of India, British and Indian—come to the conclusion that it may be a very desirable thing to make an Audit service quite independent of party politics—to make an Audit service whose duty it would be, not only to audit the Federal subjects, the " Central " subjects, but even Provincial subjects —it may be quite possible in those circumstances for the different Provinces to come to an arrangement with the Federal Government to pay a certain amount to the Federal Government; and then the Federal Government in its " Central " department will deal with Audit as a whole. Take another illustration; take the High Courts. Here also I do not want to suggest that the High Courts should be for all time " Central " subjects, nor do I want to suggest that the High Courts should be Provincial subjects. I am not concerned now with that aspect of the problem at all. But supposing we decide that the High Courts should be under the Centre. Well, the revenues of the High Courts are derived from Provincial sources. It may be quite possible to come to an understanding, between the Federal Executive dealing with the " Central " subjects and the Provincial Governments, that each Province will pay so much of the expense. Therefore, if we keep that in view, then many aspects of administration of " Central " subjects will disappear sooner than we anticipate; but, in that case, as the expense will be borne by the Provincial Governments, we should have an additional incentive for giving more resources to the Provincial Governments.

Now, Sir, I propose to give my provisional answers to the questions which you have given us for consideration under Head 4, but I would like to safeguard myself by saying that these are purely provisional. I am at full liberty to change my views when I know more.

Sub-head (i) is this:—

> " Is there to be a ' Central ' Budget distinct from the ' Federal ' Budget? "

To that my provisional answer is that there should be one Budget, but that there should be a *pro formâ* distinction between Federal

and " Central " income and expenditure. The aim should be to get rid of the " Central " section of the Budget as soon as the transition period is over.

Sir Muhammad Shafi: That would, in effect, mean two Budgets.

Sir Provash Chunder Mitter: Well, I am merely stating my view; and it is open to discussion later on as to what its meaning is. If I hear of some other better scheme I am open to conversion.

Sir Muhammad Shafi: You are in favour of one Budget as matter of principle.

Sir Provash Chunder Mitter: There is no question of principle in a matter like this; it is a matter of expediency, if you please. If your Federal Executive is going to administer not only Federal subjects but also " Central " subjects, if your income from your Federal subjects is not enough to meet all the expenditure, then you have to come to some provisional decision, and that is the provisional decision suggested in the Memorandum of some officials of the Government of India. And, subject to certain limitations to which I shall presently refer, I think a *pro formâ* distinction is all that we can hope for. The fact that the " Central " items of expenditure are few is a point to bear in mind. It may be possible, during the transition period, to evolve a system by which some of the heads of " Central " revenue may be handed over to the Federal Government, and other heads to the Provincial Governments. It may also be useful to bear in mind that, in some cases, the Provincial Governments may agree to pay definite sums, for a period of years, for items which are a common concern of British Indian Provinces but not of the Indian States.

The second sub-head is:—

> " Is Public Debt—(*a*) past, (*b*) future—to be separated into ' Federal ' and ' Central,' and on what revenues is it to be charged? "

As regards Public Debt, I am of opinion that technically it should be Federal; but a portion of the " Central " resources should remain available, at any rate for a temporary period.

Chairman: On what revenues do you envisage past loans to be charged?

Sir Provash Chunder Mitter: I propose to deal with that. A portion of the " Central " resources should remain available, at any rate for a temporary period of, say, ten years. Future Federal debts should be wholly Federal, and should be charged to Federal revenues only. Investigation will be necessary as to what portion of the past Public Debt should be chargeable to " Central " revenue. That portion of the past Public Debt which is commercially productive, or for which there are liquid assets, offers no difficulty. It is unproductive debt which requires consideration, and how much of the unproductive debt should be left to the " Central " revenue. A good portion of this unproductive debt

is India's vast contribution to the Great War. That is a subject which, I venture to think, was a common concern of British India and Indian India, so far as I am aware, the loyalty of Their Highnesses to the British Throne is such that I am sure that they will not desire to lag behind British India, and would desire to treat this as a matter of common concern; but if they do not desire to treat this as a matter of common concern, we have to consider this as a matter of British Indian concern only. As regards the balance of the unproductive debt, it should be paid partly by Federal and partly by " Central " revenues, according to the proportion of the total revenue, Federal and " Central." That is all that I have to say on sub-head (ii).

Sub-head (iii) is:—

> " How are the revenues and expenditure of the British Indian Provinces which are not Governors' Provinces to be treated? "

My answer is that the revenues and expenditure of these Provinces, which are not Governors' Provinces, should be treated as Federal. That is the recommendation of the Note prepared by the Finance Department of the Government of India; and as these minor Provinces are not autonomous, this ought to be the right line. Further, the less " Central " subjects we have in future, the better. The total deficit is not large. Of course these Provinces should get their proportionate share of Income-tax and other " direct " British-Indian taxation; but as they are not autonomous Provinces, the question of conflict between the Federal Executive and the Provincial Executive does not arise here.

Question (iv) is:—

> " What are to be the respective fields of taxation of the Federal and Provincial Governments? How far would it be feasible to assign only " indirect " taxation to the former and only " direct " taxation to the latter?

My answer is that, in view of the difficulties mentioned by the Indian States about " direct " taxation, and in view of other considerations to which I have referred—namely, the importance of making Income-tax available as much as possible to the Provinces for improving matters—we should certainly aim at " indirect " taxation being the only method of taxation for the Federal Government. The Provincial Governments should have the benefit of all " direct " taxes. Some of these " direct " taxes, which can be raised within the limits of the Province without any difficulty or complication, should be left absolutely to the Provinces; but as regards " direct " taxes, such as Income-tax, which can only be suitably raised on a basis of co-operation between the different British Indian Provinces, these taxes should be raised through the British-Indian Central administration acting under the direction of the Federal Legislature and the Federal Executive. If, however, the taxes are so raised, they should be distributed to the Pro-

vinces on a suitable basis. This would be feasible; and by this method the conditions of the population in the Provinces would improve, and such an arrangement would react favourably on the "indirect" taxation left to the Federal Government. If, however, in emergencies more money is required by the Federal Government, some suitable method might be adopted under which, up to a definite limit, the Federal Government could call upon the federating Units to contribute—for example, a percentage of the Income-tax from the British Indian Provinces. What should be the line of contribution for the Indian States, when such an emergency arises, is a matter on which we should certainly defer to the views of Their Highnesses.

I suggest that the following heads of "indirect" taxes for the Federal Government should be considered. We have already the existing Customs duties. We have already the existing Salt duty. Additional sources like the following may be considered, such as an Excise duty on Matches. That is an "indirect" tax. How much it will bring in will be a matter for investigation. We have some provisional estimates in Sir Walter Layton's scheme, which have been rather severely criticised; but we shall now have to consider the possibilities under this head, not only from the point of view of British India as Sir Walter did, but of Indian India as well.

Sir Maneckjee Dadabhoy: Do you say that Excise should be for the Provincial Governments?

Sir Provash Chunder Mitter: No.

Sir Maneckjee Dadabhoy: It should be Federal?

Sir Provash Chunder Mitter: Yes. My submission is that Sir Walter Layton's suggestion might have been a useful one when there was no question of federating with the Indian States, but that, as Customs and Salt may not suffice for Federal expenditure, we have to think of other sources of Federal revenue. In view of certain points which I have already made, the aim should be to get "indirect" taxes for Federal sources; and one of the items of "indirect" taxation that I suggested is Excise duties on Matches, both in British India and in Indian India.

Then another source which may be worthy of serious investigation is Excise duty on Cigars, Cigarettes and pipe Tobacco. I am not referring to the chillum tobacco smoked in Indian style, but I am referring to the Western style of smoking—and many Indians have adopted this Western style. That may also be investigated as a possible source of Federal income. Then, a duty on private import of Silver. There may be various other suggestions, and better suggestions may be made by my colleagues; but as we are to keep in view the question of "indirect taxation" to which Their Highnesses may agree, and which at the same time may bring in a fair amount of revenue, we have to make our suggestions in view of those general considerations.

Then, Sir, the next item is item (v):—

> "To whom and for what purposes are the proceeds of Income-tax in British India to be credited?"

My answer is that, during the transition period—say for ten years—up to a limit of half the Income-tax may be made available for the Federal Government. The rest of the Income-tax during this period should be made available to the British Indian Provinces; and the whole of the Income-tax after the transition period should be made available to the British Indian Provinces. If the States refuse to raise taxes when they ought to be raised, the burden will fall on British India alone, unless you have a definite percentage. It may be noticed in this connexion that the only direct payment made by the Indian States is a tribute of 74 lakhs. Of this, about 5 lakhs is not really a tribute. As I claim that British India should be relieved from the payment of Income-tax, I, personally, would have no objection to relieving Indian India of the payment of tribute. I know in certain quarters strong opinions are held on the point, but I will deal with that later on.

Then the sixth item is this:—

> "To what extent, if at all, will Federation necessitate surrender, by federating States, of rights to raise revenue within their territories, at any rate by 'indirect' taxation—(*a*) as regards existing taxes; (*b*) future taxes?"

My answer is this. As regards existing taxes, I would aim at as little dislocation of the existing practice as is possible. No doubt, according to sound theoretical reasons, some existing taxes, such as Customs levied from inland Customs barriers, either should be abolished or should accrue to the Federation. If we follow this principle, it may be a perfectly sound principle; but questions of compensation may then arise and other important questions also may arise. All the States may not have similar Customs barriers; they may not be levying similar rates. There are complicated questions, therefore, not only between British India and Indian India, but between the States *inter se*. The amount of revenue is not much and the population concerned also is not much. Therefore the substance of the question of principle—namely, that it may affect the revenues of the Federation as a whole—loses much of its strength. But I say the question may well be investigated by the sub-Committee; and, not only that, but I strongly urge that this question may be left till after the constitution is established. I am against beginning with points of irritation when we start the constitution. I am in favour of submitting in the beginning to present conditions, provided that it is definitely laid down that, in future, "indirect" taxes should not be levied without the concurrence of the Federal Legislature and the Federal Executive. In other words, as regards the existing state of things, I am willing—if I may use a colloquialism—to wink at it; but as regards the future, it must be with the consent of the Federal Legislature and the Federal Executive.

Then, Sir, the next question is (vii):—

> " Under Federation, will there remain any foundation for a general claim on the part of the States to a share of ' indirect ' taxation imposed by the Federal Government, or to any profits accruing from Currency, Railways, Posts and Telegraphs, etc.? "

My answer, Sir, is in the negative. If there be a surplus, the proper procedure would be to reduce taxation, or, if the needs of the situation demand it, to fund it to meet future contingencies. Furthermore, there cannot be any claim by some of the Units on the entire Federation. That is the very negation of the idea of federation. We bring certain things to the common pool for the discharge of certain duties and responsibilities.

The next question, Sir, is question (viii):—

> " What principles should be applied in the case of (*a*) financial or material contributions made by some States, but by no British Indian Province, *viz.*, cash payments, State Forces and territories ceded as the price of defence; and (*b*) States which at present enjoy a measure of immunity from the incidence of the Sea Customs tariff and the Salt tax?"

My answer with regard to (*a*) is that it would be impolitic and undesirable to enter upon this question on the threshold of the setting up of the new constitution. If insisted upon, this question may be examined later; but if this question be examined, British India also can make important counter-claims—and provisionally, I am of opinion that the counter-claims of British India will much outweigh the claims of Indian India. Further, this is not a question common to the Indian States as a whole. Individual Indian States may have a claim of this kind; others may not have a similar claim. For instance, a Maritime State may have a claim on that point. That is an additional reason why we should leave that question alone for the present.

Sir, as regards (*b*) of (viii); as to—

> " States which at present enjoy a measure of immunity from the incidence of the Sea Customs tariff and the Salt tax "

my opinion is that they should enjoy that immunity, subject only to Treaty rights. Where there are no Treaty rights, they should not enjoy it. This no doubt gives rise to some anomaly; but, on the whole, it is better in order to avoid friction, and I do not think the loss of revenue will be much. When we examine it, I think the loss of revenue will be found to be almost negligible.

> " (ix) Should the Federal Government have any control over Provincial borrowings? Should there be a Federal Loans Fund? "

My answer is that the Federal Government should have control only for the purpose of co-ordinating borrowing, with regard to rates of interest, with due regard to the security offered. One Provincial Government may offer a better security and there is no reason why that Provincial Government should not be allowed to borrow money at a lower rate of interest; but there should not be any undue competition either between the different Units of the Federation or between the Federal Government and a Unit. It is for that reason that power should be reserved for co-ordination. As to whether there should be a separate Loans Fund, my answer would depend largely upon the attitude of the Indian Princes. If they desire to participate in a Loans Fund, then questions referring to internal administration may naturally arise, and I do not know whether they would like that. After I have heard the views of Their Highnesses about a separate Loans Fund, and whether they desire such Loans Fund for the Indian States as well, I shall be in a better position to discuss this question.

Then, lastly, the tenth question is this:—

> "Should Provincial Balances be kept with the Federal Government pending the establishment of a Reserve Bank?"

My answer is "Yes." If the Indian States agree so to keep their balances as well, they may do so; but possibly they will not agree to keeping their balances with the Federal Government. The British Indian Provinces may, up to a limit, keep their balances with the Federal Government; but the rate of interest paid to them should not be inadequate, and in no case should be less than 1 per cent. below the borrowing rate of the Federal Government. At the present moment what is allowed is very much lower than that.

Now, Sir, I desire to say a few words in support of the opinions that I have expressed, but I do not desire to be long.

On the question as to what would be the needs on the revenue side of the Federal Government, the item of expenditure which looms largest is that of Defence. If you turn to page 10 of the document which has been prepared by the Government of India, you will find that the item for Military expenditure is 52 crores. It would appear from the illustrative Budget on the same page that Customs revenue in the year 1931-32 is estimated to be 55 crores, and the Salt revenue is estimated to be 7 crores. Therefore the total will be more than 62 crores. As regards Defence, other points may have to be considered, namely, whether there can be any reduction of expenditure—whether capitation charges should not bring us in something and also whether, in view of the services which are rendered for Imperial purposes, we are not entitled to something. However, these are questions foreign to our present purpose. I only mention them to show the possibilities of the position. This illustrative Budget, however, merely gives an idea, and even on that idea the income from the two existing heads of Customs and Salt is far in excess of the main item of Military expenditure. Therefore it would be a matter for the sub-Commit-

tee, which you are going to set up, to go into the question more carefully. Defence is not the only item. There are other items. If the income now derived from the two heads of Customs and Salt is not enough, it will be for the sub-Committee to consider what other sources are possible. Lastly, as I have suggested, it may be necessary that a portion of the British Indian Income-tax should be made available to meet contingencies, provided Their Highnesses also agree, after the transition period, to make some "direct" source available. But, for the intermediate period, a portion of the Income-tax will be made available.

With regard to Income-tax, the right-hand column of the illustrative Budget on page 10 gives us an idea. "Gross collection, 16·45 crores." According to the illustrative Budget, they suggest a contribution to the Federal fund of 12·13 crores, and a contribution to the Provincial fund of 3·89. They want to appropriate, according to the figure just above, 12·13 for their purpose. The total income there is 16·45. The total income, India 1928-29, was 16·60. That is, roughly speaking, something like the estimated total income. This has an intimate connection with the question of debt charges, and what I want to say I will say in that connection. Page 5 of the Government of India's document summarises the total debts. The total amount of debt, as you will find from paragraph 10 on page 5, is Rs. 1,17,357·70 lakhs. Out of that 1,00,120 is productive, or payable out of its own resources. Therefore, only 172 crores is supposed to be non-productive, and, according to the Simon Commission's Report, Vol. 1, page 162, practically the whole of this is War Debt. I have already made my suggestions about that. It is for payment of this 172 crores of the non-productive debt that some portion of the Income-tax may be necessary; but if we work out the figures, and if we proceed on the basis that the Federal section of the income should pay its quota, then I submit that the calculation will be somewhat different from the calculation set out in the illustrative Budget. I will not go into details, however. Then I submit it would be quite possible to earmark at least half of the total Income-tax for the benefit of the Provinces; and I further submit that a 10 years' period ought to be enough, because as soon as this unproductive debt has been paid off or substantially diminished, then there is no occasion for continuing this difference—a difference which is bound to give rise to complications.

I have already referred to the position of the Areas Centrally-administered. I will only refer to page 7 of this document prepared by the Government of India. They deal with the matter on page 7, paragraph 16, in which members will find that the total expenditure is 409 and the total revenue is 214, so that the net loss is 195 lakhs. This does not take into account the portion of the Income-tax which will be available to them, or the question of separation of the North-West Frontier Province. My main point is that the total amount which is to be payable for this is compara-

tively small. There are also sources of revenue in these Centrally-administered Areas, and these sources are also progressive. We have everything to gain if we make this a Federal subject and not a "Central" subject.

My next head is a further reference to the allocation of debt charges. In paragraph 4 of the paper which was prepared at the instance of Your Lordship, it is stated:—

> "Another difficulty in the way of amalgamation arises in respect of the Public Debt. It is, however, suggested that the assumption by the Federation of responsibility for the existing debt would not prejudice the interests of the States and would involve no new obligation on State revenues. The debt is now charged on the 'revenues of India,' and these, under section 20 (3) of the Government of India Act, include 'all the territorial and other revenues of or arising in British India.' As matters stand, therefore, State revenues form no part of the security, and it is desirable to make it clear that there is no intention of charging existing or future debts on these revenues. This could be done by defining in the new Constitution the 'revenues of India,' on which the existing debt would be charged, as including the revenues of the Federation as well as the revenues of British India."

Now, on the question of debt generally, there is first of all the particular point—namely, the position *vis-a-vis* our creditors. As regards our creditors, they have undoubtedly the right to every rupee of the revenue or of the assets on which they lent the money. Therefore, after they are protected, another question arises *vis-a-vis* ourselves—*inter se* between Federal and "Central"—*inter se* between British India and the Indian States. As regards that, it would be a just and fair thing if we both proceeded on the basis that neither Indian India nor British India is paying any "direct" taxes; but inasmuch as Federal India is taking over the administration of the past, we ought to be willing to contribute a portion only of the "direct" taxes for the intermediate period. And, speaking for myself, I am willing to give up the contribution of 74 lakhs from the India States. Why? Because it is not a common contribution between the different States of India. That is one reason. Some States pay more, some States pay less; and also it is a negligible amount. Also it is not a tax; and also because, in future, if the exigencies of the situation demand it—if it is necessary to have "direct" taxation—I want, if need be in future, that "direct" taxation should be an open, direct taxation both for British India and for Indian India. Therefore let us start with a clean slate. You on your side should agree to our getting half the Income-tax revenue. Strictly, the Federation has no right even to the half which I am willing to contribute for the first ten years—no right whatsoever; but we both want to look to each other's difficulties. You of the Indian States, looking to the

difficulties of the British Indian Provinces, you agree to give up half of the Income-tax from the very beginning; and it may not be wholly unselfish, because, if the Customs revenue thereby improves, your position also will improve. If the material condition of British India improves it cannot but beneficially affect the material conditions of your subjects. Therefore, that is my submission about debt charges. As regards third persons, full liability. As regards our internal arrangements, only a portion of the Income-tax for the unproductive debt, should Their Highnesses desire to saddle the whole of the War Debt on British India.

Then about the sources of taxation, my general opinion I have given; but at page 16 of this Memorandum, this question is dealt with. I do not want to read it. My colleagues will no doubt look into it. Some of the suggestions which I have made are also to be found there. Then also at page 2 of the second Memorandum, if I may so describe that Memorandum, that question is dealt with. Then, at page 5 of the Memorandum prepared at your instance, there is a main head of "Taxation," and I desire to draw the particular attention of my colleagues to pages 5 and 6; but I do not want to tire their patience by reading anything.

Then, Sir, I desire to refer to certain other connected matters, which may not directly arise on the questions I have answered, but which, none the less, in my opinion, are important. On the question of Export duties, I would draw the attention of my colleagues to the provision in the American Constitution. Section 9, subsection (5) of Article 1 of the United States Constitution will show that export duties cannot be imposed without the consent of the federating State; and this is a problem in which we in Bengal are very seriously interested. We pay between 3½ and 4 crores of rupees to the Central revenue—we do not grudge that—but at what expense? At the expense of millions of ryots, shortening their lives, standing waist-deep in water to cultivate jute; and we are left without any resources to look to their health or to their welfare. I am sure, Sir, that if the wider public of India knew all the difficulties in that connection, I have enough confidence in the all-India patriotism of our all-India leaders to believe that we would have got some relief there. But be that as it may I am referring to a precedent—the precedent of the Federation of the United States of America—that if you want to impose an Export duty on a matter in which any particular State is interested, you should do so only with the consent of that State. In this matter my Province is primarily interested; and my friend, Sir Sayed Sultan Ahmed's Province, with regard to some of the districts, is also interested; but neither he nor we get any benefit from it.

(*At this point Lord Sankey left the Chair, which was taken by Lord Lothian.*)

Sir Prvoash Chunder Mitter: With regard to taxation I suggest that, if the Federal Government be left only with "indirect"

sources of taxation, and if the aim of the future be to get rid of Central administrative expenditure—I am not referring to "Central" subjects because there must be a number of "Central" subjects for all time, but I am referring to Central administration more than to "Central" subjects. Having "Central" subjects for the purpose of some kind of co-ordination is a different matter; but for purposes of administration it is easy to get rid of the "Central" subjects. In fact there are very few "Central" administrative subjects if you go through the list carefully. As we aim at getting rid of "Central" administrative subjects, then the "direct" taxes must be by the Provinces; but, as I have already indicated, some types of "direct" taxes can be only conveniently and justly raised by a grouping of the Provinces in British India. Whether you will give up any portion to India as a whole is a separate problem, but logically that is the only position possible.

There is another point to which I think it right to draw your attention. You will find in the Reports two lists. One is a list of the Federal subjects. The other is a list prepared by a joint sub-Committee, under the presidency of the Marquess of Zetland, in which certain subjects are referred to as purely Federal, certain ones as partly Federal and partly "Central," and certain ones as Provincial. I speak subject to correction, but, so far as I am aware, after this list was submitted it was never properly scrutinised and examined by the Federal Structure sub-Committee. On going through the list, I find that there are some slight discrepancies. It would be desirable to examine these discrepancies in order to come to definite decisions with a view to getting rid of them.

Chairman: Do you propose to do that now, or is that for the sub-Committee?

Sir Provash Chunder Mitter: I am referring to the point only. It is not convenient to go through so many items here. I am referring to the point so that it may not escape attention.

In the Memorandum of the Government of India there is a reference to present-day economic difficulties. Although the Government of India has said that, perhaps those difficulties will disappear, they very rightly point out that there are those difficulties. We are framing a constitution for the future, but we cannot ignore the present. There are those difficulties. What is the remedy? Can we, in our constitutional discussions, find any remedy? My answer is a most emphatic "No." Unless you can remove the conditions which are the root cause of these difficulties—as the Government of India warns us—an examination of the present difficulties will only lead us into further difficulties; but, if there are those difficulties, meet them by all means by any constitutional method by allotting a little less of Income-tax or a little more of Customs to meet them. As the subject has been referred to in the Memorandum, may I express my humble opinion that

you in this country also are very much concerned with these difficulties. Unless we can find a solution, in three years' time there will be disruption of society in India. I speak after weighing every word. I have reason to know the position in my Province. I have inside as well as outside information. You cannot solve it unless you solve it from the point of view of world economy. As that point has been referred to, ignore it for our present purposes; but for heaven's sake do not ignore it entirely. If we do, we are framing a constitution for something which will never come to light.

I have a few words to say about the Provinces. Naturally my thought turns to my Province, but I know that this is an all-India Committee, and it is not concerned with individual Provinces; but there is an all-India aspect common to my Province, to the Province of my friend, Sir Sultan Ahmed, and also to Assam, these three representing more than one-third of the total population of British India. I know that our British Indian leaders approach all these questions from an all-India national point of view. As I have that confidence, I am sure that they will approach it from that all-India national point of view; but even if it were my Province only, and not these other two Provinces, mine is a very big Province, and it is a part of British India, and the British Indian leaders cannot afford to ignore it. Repercussions of the difficulties in my Province are unhappily to be found in other Provinces. There is one aspect of the problem with which men outside these three Provinces are not very familiar. That aspect is that the normal development of activities has been stopped for a number of years in these Provinces. The facts are well known, but the conclusions are not so well known. It is well known to all of us in this room that, in 1905, there was a partition of Bengal into two Provinces. In those days, petty little schemes had to come up before the Secretary of State for sanction. Therefore the two Provinces, which were then constituted Provinces, could not really start their work until about 1908 or the beginning of 1909. In 1911 came the re-partition. Then the same old process was repeated in 1913. In 1914 came the war and everything was stopped. In 1921 came the deficit of over two crores in my Province and a deficit in the other two Provinces. If you take, for example, primary education, there is not a single Province in India where, for primary education, the Government were spending in 1920 less than 4 to 5 rupees per head. In Bombay it was 14 rupees; whereas in 1920 our Government was spending only just over 1 rupee 14 annas per head. What is the reason? You cannot ascribe it to a difference in attitude between the I.C.S. officers and the educational officers in Bengal, and the I.C.S. officers or the educational officers in other Provinces. The real reason is that the two partitions and re-partitions stopped normal expansion. It is the same in public health and the same in other things. I will not go into details.

Dr. Shafa'at Ahmad Khan: What about permanent settlement?

Sir Provash Chunder Mitter: If you want to go to the permanent settlement point, I will show how India has benefited and not we. At the present moment, we pay far more in Income-tax than Madras or the United Provinces, because of the permanent settlement; we pay far more in Customs duties because of the permanent settlement.

Dr. Shafa'at Ahmad Khan: Because of the permanent settlement?

Sir Provash Chunder Mitter: Yes. Do not run away with preconceived notions. If you want to go into the question of permanent settlement, I am prepared to go into it. Appoint a committee of 5 just men. I do not want anyone from my Province. My facts are so strong that I am sure they will be convinced.

Mr. Zafrullah Khan: If you are suffering so much from the permanent settlement—

Sir Provash Chunder Mitter: I am not suffering from the permanent settlement at all; that is a mistake. If you get rid of the permanent settlement, you will not get 30 lakhs more of revenue.

Sir Maneckjee Dadabhoy: Yes, but you cannot have it both ways.

Sir Provash Chunder Mitter: We do not want it both ways. Do not run away with preconceived notions. We are contributing more than any other Province to the Indian Exchequer. Take Land revenue in Bengal and in Madras. In Madras the total Land revenue is about 6 crores and more than 2 crores are spent in realising it. Our total revenue is 3 crores 25 lakhs, and we spend less than 20 lakhs in realising it.

Mr. Iyengar: The percentage of the cost of collection of Land revenue is 2 per cent.

Sir Provash Chunder Mitter: It may be; but what is the expenditure in collection?

Mr. Iyengar: That is what I say.

Sir Provash Chunder Mitter: I am quite ready to go into that figure; but, assuming your preconceived notion about permanent settlement is right, is not that a part of the position in Bengal? If that is part of the position in Bengal—if you want us to have additional taxation—are you willing to pay additional taxes yourself? If we want to get rid of permanent settlement, we shall get rid of it for our benefit; but why should you get rid of it for the benefit of other Provinces? Believe me, you are absolutely wrong. When Sir John Simon went into the matter, he was satisfied that these preconceived notions did not represent the true state of affairs. It is a very big subject; you may have your own view. My complaint is, that you pretend to be all-India leaders, but you

think that Bengal is not part of India. Go into that matter by all means.

Sir, they have taken me away from my line of argument by this irrelevant interruption, if I may say so with the utmost respect. Now, Sir, my point is this, that in these three Provinces our normal expansion of expenditure, and particularly in the "nation building" departments, was stopped.

Sir Maneckjee Dadabhoy: It was stopped, as far as I know, in all the Provinces.

Sir Provash Chunder Mitter: It is perfectly true that all the Provinces stopped during the war; but I must have been very dense if I did not make myself clear, in stating my case, when I referred to the fact that, on account of two changes of Government, the expansion possible in the ordinary course could not take place. However, I will not refer to that any more. But, Sir, if on account of these two changes the normal expansion was stopped, that is an additional difficulty, and that additional difficulty should be taken into consideration. I do not for a moment say that, because of that additional difficulty, you should pay me more than you pay to the other Provinces. What I do say is, that the position in these three Provinces, and particularly in my Province, is such that, unless some relief is available, the situation will be very serious. Never mind how you settle the fate of India. Never mind what constitutional changes you make. So far as my Province is concerned my Province will not be able to participate in those benefits. That is an aspect which I put before you. If others desire to consider the question and to go into it, I am at their service.

Mr. Iyengar: My Lord, The Lord Chancellor introduced this important Head for discussion with a collection of papers which, as has been suggested, rightly require examination and discussion in a smaller Committee, and I cordially endorse that suggestion. Indeed, it is my hope that, if the financial problems of the Federal Structure are solved so as to be just and equitable to all the interests involved—as the Lord Chancellor very rightly observed—solutions of many of the political problems of Federal Structure will be immensely facilitated and the inner Committees' discussions will be wholly fruitful in this respect. As you have desired that our observations at this stage should be more or less general, you will permit me to postpone any categorical answers to the points which have been put down, and to place before the Committee certain general lines of discussion and investigation in the sub-Committee, and the general principles that have to be followed in dealing with them. Before doing so, I would, in as few words as possible, elucidate what, in my view, are the constitutional implications of the change from Central finance, as now organised, to Federal finance, as we would have to organise it under the Indian Commonwealth.

Under Section 20 of the Government of India Act:—

> "(1) The revenues of India shall be received for and in the name of His Majesty, and shall, subject to the provisions of this Act, be applied for the purposes of the government of India alone."

Section 21 of the Government of India Act then recites:—

> "Subject to the provisions of this Act and rules made thereunder, the expenditure of the revenues of India, both in British India and elsewhere, shall be subject to the control of the Secretary of State in Council and "—this is important—" no grant or appropriation of any part of those revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India."

I may remind the Committee, My Lord, that a proviso was added on account of certain doubts, entertained in legal circles some years ago, as to the validity of the authority given by the Secretary of State to the Government of India. The proviso runs as follows:—

> "Provided that a grant of appropriation made in accordance with the provisions or restrictions prescribed by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council shall be deemed to be made with the concurrence of a majority of such votes."

That means, in other words, that the actual appropriations made by the Governor General or by the Local Governments shall be deemed to have been made by the Secretary of State in Council. The legal effects of these provisions relating to the proceedings of the Council of India, My Lord, were much debated on a famous occasion in the House of Lords; but the doctrine of Cabinet responsibility of the Secretary of State in London has sufficed to put the Council of India out of action where British interests are involved.

Every financial power, therefore, exercised by the authorities in India is thus a delegated one, and the control of the Secretary of State in Council in financial matters is fairly complete. Though the actual transactions and powers in the hands of the Governor General in Council are wide and large, they are derived from a clause in the Statutory Rule, now in operation, which provides that all monies derived from the revenues of the Government of India, or otherwise, by the Indian Government, are paid into the public account of which the Governor General in Council is the custodian, and out of which he is authorised to make grants or appropriations in accordance with the provisions or restrictions

prescribed by the Secretary of State in Council. The Secretary of State in Council is thus, under the present constitution, a corporate person capable of sueing and of being sued, and it is this corporate personality of the India Office that should necessarily be brought to an end by the creation of the Federal Government for all India.

The British Indian revenues to-day, moreover, comprehend the Central and Provincial revenues; and the first step in the process, therefore, is to separate the balances and finances of both, and to vest the former in the Federal, the latter in the Provincial, auhority. The Government of India's Ways and Means operations have also comprehended all these and other funds and reserves relating to Currency and Remittance transactions. They have also been acting as the bankers of the Provincial Governments, and, through the Auditor-General, as their auditing authority. I do not want to go into these details, except to emphasise that both the Indian States and the British Indian Delegates should clearly visualise the need for immediately altering the constitutional status of the Government of India. They should also perceive the need for readjusting Provincial finance in regard to Central finance, so as to put them both in accord with the scheme of federation.

I would, as a mere illustration, put the future position of the Federal Government in finance thus:—

> "All revenues of India, from whatever source arising, shall be received for and in the name of the Commonwealth and shall, subject to the provisions of this constitution, be applied for the purposes of the Government of the Commonwealth in the manner hereinafter provided.
>
> The revenues of the Commonwealth shall be paid into the Public Account, of which the Governor General is the custodian, and credited to the Government of the Commonwealth. The Governor General shall, on the advice of his Cabinet, have power to prescribe by general or special order the procedure to be followed in the payments of money into, or in the withdrawal, transfer and disbursement of monies from the Public Account, and for the custody of monies standing in the account."

In taking over the financial functions of the Government of India and of the Secretary of State in Council, the Federal Government and the Provincial Governments have to be separately vested. I do not refer to the State Governments, for the present, for there has been no constitutional or legal vesting of the State revenues or obligations, though I am aware that in many States there has been a great deal of indirect pressure and influence in respect of direct expenditure. The Federal Government and the Provincial Governments have to make adjustments of assets and liabilities as well as of resources and reserves on the one side, and of charges and expenditure on the other. It is for these matters that we have to

rely for our information on the invaluable Memoranda given to us, and other official documents.

I do not propose to say much at this stage on the first category. The actual liabilities as classified are put at 1,001 crores covered by assets—including Railways and other commercialised and other productive assets—and of about 172 crores unproductive or, as you would call it, dead-weight debt. This latter debt is covered by a sinking fund, and is thus a diminishing liability, as will be also pensionary and superannuation charges in respect of past servants of the Government which we have to meet. As I shall have occasion, later on, to deal with the general policy to be followed regarding the sinking fund provision made in the Indian Budget for productive as well as unproductive debt, I need only say that I agree with the proposal now made, in the official note circulated to us, that the tentative decisions arrived at by the Federal Structure sub-Committee on the last occasion in regard to the existing debts and assets, should be modified. I agree that the only right course to take—and it is certainly to the advantage of all the Units including the States—is that the asset-covered part of the debts should be federalised, especially as they are provided with ample reserves and sinking funds, including Railways and other capital accounts.

As regards the 170 crores uncovered by assets, that remains a charge on the general ordinary revenues of India, and this is also covered by an ample sinking fund which will soon extinguish it. I agree that this burden should be settled equitably between the States and British India, but I would demand that a detailed scrutiny of all the items should be undertaken.

My friend Sir Provash Chunder Mitter, in his detailed facts and figures, pointed out that there are items—for instance that connected with the War Debt of the Indian Government—in which we can certainly examine the claim that the Indian States also should participate in that liability when we make a Federal Constitution. I may give another instance in that connection. Some part of this debt, I believe, is in respect of operations on the Frontier. Now, as Defence is going to be a Federal subject, the question whether the expenditure which has been incurred out of debt for these Frontier operations immediately after the War should not also be shared by the Indian States is, I submit, a matter which requires examination. On the whole, however, I do not expect that the allocation of the existing Public Debt, as between the Federation and the Indian States, will present any great difficulty to those who will be charged with this examination. Similarly, the question of the redistribution of Central and Provincial sources of revenue can be discussed in the sub-Committee.

Concerning the allocation of revenues and expenditure, it is, of course, clear that the triple classification of services and subjects as Federal, Central, Indian and Provincial, is not exactly reproduced in the financial classification of resources and expenditure. On the other hand, as the Lord Chancellor's Note points out, even the proposal of the Governent of India—that there should be a single

Federal Budget, with a *pro forma* distinction made between Federal and "Central" charges and a British Indian Income-tax to meet the latter and finance the Provinces with subventions—might well yield place to a scheme in which the distinction between "Central" and Federal finance should be broken down definitely. I will read that passage, because I consider it raises the general question of principle. The Note says:—

> "It may be asked why, having gone so far, we should not go a step further and break down completely the distinction between Federal and "Central" finance? If this could be done, and if amalgamation could be effected without prejudicing the interests of any member of the Federation, not only would there be an immense gain in simplification, but important political results might follow. The Federation would stand for India, and a possible source of friction in the future between British India and the States would be removed, for so long as the distinction between Federal and "Central" receipts remains, a conflict of interests is bound to arise when it becomes a question of imposing additional taxation or of reducing existing taxation. Further, so long as there is a distinction between Federal and "Central" finance it would, in practice, scarcely be possible for a State subject to become Finance Minister."

That is a matter in which, I am sure, we would be able to obtain the sympathy of the Delegates of the Indian States.

It seems to me, in discussing particular proposals or principles of Federal finance, we are too apt to forget that financial-like economic doctrines are relative. The doctrine, for instance, that the Federal Government should depend entirely upon "indirect" taxation, and States' Governments should have full and exclusive control upon all "direct" taxation, is one that has important qualifications both from point of view of theory and experience and practical results. The nature of the services to be performed, and the charges on the revenue realised, have to be considered. A common assumption is that the revenue from Customs should cover expenditure on Defence and other external expenditure. The fallacy of this cannot be better illustrated than by contemplating the effect of allocating the present Customs revenue of the Indian Government for the entire Military expenditure of India, as the shortage in Customs revenue, which has been produced by the present financial crisis, is so serious that it is simply impossible to maintain the doctrine that Customs duty should cover even Military expenditure alone. Indeed, I should have preferred to premise all I have to say on this subject by the proviso that they are entirely hypothetical, and they proceed on the assumption that the normal conditions established in due course would approximate to the state of things that existed two or three years ago.

In the next place, the incidence of taxation is, and has always been, a difficult problem; and whether the incidence of a particular

" direct " tax is exactly the same as intended is as difficult to settle as that of a particular " indirect " tax. A " direct " Income-tax on Corporations and Companies may hit but few people, or millions, as the case may be. Again, a tax on consumption of articles of strictly limited use, such as particular luxuries, can always be levied with direct incidence on the persons that may be affected. It is the financial and political necessities of the commonwealth or the government concerned, and the pursuit of that equality and equity of taxation, which financiers seek so fondly to realise, that should ultimately guide the decision on the matter; and I would appeal to the representatives of the Indian States and British India alike not to tie themselves down by any hard and fast rule or preconceived notions as to future requirements and developments that we can hardly foresee to-day.

In Switzerland, the obstacles and restrictions on the Federal Government against the imposition of " direct " taxation actually broke down under the weight of heavy expenditure during the war period, and it was found much more effective and just, formally to amend the Constitution—to levy Income-tax and other " direct " taxes—than to call upon part governments or Cantons to pay the contributions they were liable to make for the purposes of the Federal Government in emergencies. Germany started with a restriction against " direct " taxation, and has ended by placing unlimited financial powers in the hands of the Federal Government. In the United States also the power to levy Income-tax was formally adopted as the Sixteenth Amendment of the Constitution in 1913, and it now yields two-thirds of its total revenue. I need not recite other examples. Circumstances have forced all the federations to levy " direct " taxes, and I think it is our business to profit by the experience of federations, particularly in financial matters.

There is one other matter in this connection, My Lord, to which I would just make one reference, lest I should be considered to have omitted it; and that is in regard to the distribution of Federal and Provincial or State resources, and the question where the residuary powers of taxation reside. All that I can now say is that I hold very strong views on this question of residuary powers, whether it be in the field of legislation or of taxation. I think that a good deal of misconception, a good deal of confusion of thought and language has prevailed in the discussions, which I have had the pleasure to peruse, which took place during the last sitting of the Federal Structure Committee. I feel that this question, if examined thoroughly, would be found to be of more or less academic importance. I therefore think that the subsidiary Note which has been prepared for our use by the Government, which deals with this question, lays down all the considerations which should govern us in deciding on this matter. This Note, in paragraph 40 of the second Memorandum, refers to the question of what is the extent of control which the Federal Constitution should exercise over taxable resources throughout the country—that is, within the states concerned—and it has given certain general rules which may be

imposed. I therefore would, in dealing with it, without laying down hard and fast rules, put down one or two general principles and just say one or two words on that. The principles that I would adopt are that there should be no internal trade barriers—

Sir Maneckjee Dadabhoy: Excuse me one minute—internal trade barriers between Province and Province, or between the States and the Provinces?

Mr. Iyengar: Between all the Units of the Federation, of course.

Mr. Sastri: Would you admit the principle that compensation should be made wherever there exists such?

Mr. Iyengar: No; the question whether we should make compensation where there is an existing resource, of course, has to be considered, as also whether other resources can be set apart in substitution for it. There will be other sources out of which these States can recoup themselves, and there will be other means of taxation besides internal Customs barriers.

Mr. Joshi: May I ask whether you include octrois?

Mr. Iyengar: Yes, of course. They are all referred to, you will find, Mr. Joshi, in the Note of the Finance Department—octroi, excise and internal Customs and so on.

Sir Provash Chunder Mitter: I know, but it is not mentioned there that the municipal authorities will abolish their octrois.

Mr. Iyengar: I think it is most mischievous to have octrois. One of the fundamental concepts involved in a federation as it is understood by all constitutionalists, is the securing of equality in fiscal matters as between the states. Indeed, next to national defence, the principal motive for the formation of federations in the past, and at present also, I believe, has been the desire to establish those conditions that are essential for the free development of trade, industry and commerce throughout the whole of the federating units. I was glad, therefore, when His Highness The Maharaja of Bikaner definitely declared in the course of his speech on Tuesday, on Head 3, that there should be no discrimination against the States and their subjects in regard to taxation or any other matter—a point on which I venture to think all will be agreed. Therefore, while it would be improper for the Federal Government or the Indian Provincial Governments to impose discriminatory taxation against the States and their subjects, it follows equally, I take it, that it would be improper for the States to impose discriminatory taxation of any kind against British Indian subjects, and that the removal of internal tariff walls must be an essential feature in an all-India Federation.

Sir Akbar Hydari: Would you call this discriminatory internal taxation? If everything which is imported, whether by a British Indian subject or whether by a Hyderabad State subject, is subjected to a Customs duty, would you call that a discriminatory taxation?

Mr. Iyengar: No; if all goods consumed, whether by Indian State subjects or whether by British subjects, were subject to a common outside Federal tax, there could be no discrimination in it.

Mr. Joshi: That is not what Sir Akbar is putting to you.

Mr. Iyengar: Would it be discriminating if you imposed a Customs duty not only upon the Hyderabad State resident but also upon a British resident? No. British residents, when they reside there, take, if I may say so, a temporary domicile in Hyderabad.

Mr. Sastri: You mean that would be contrary to your previous definition.

Mr. Zafrullah Khan: Will not that be a trade barrier, according to you?

Mr. Iyengar: Yes. There are other important questions which arise in the reconstruction of the financial scheme, which have to be dealt with by expert committees. The question of borrowing powers and facilities for the Federal and Provincial Governments is one which is dealt with in the note supplied to us. My friend, Sir Provash Chunder Mitter, has very rightly pointed out that we should set up this Federal Loans Board, which we must try to persuade all the Provinces and Indian States to join, on such terms as may be equitable to all. There is again the question of Audit, to which my friend, Sir Provash Chunder Mitter, referred. At present there is a great advantage, no doubt, in the maintenance of an independent Audit under the direct control of the Central Government for Provincial accounts. That is an advantage that we should not like to miss; but the independence of audit need not necessarily mean that we should give up the right of each State, or of each Province, and of their Legislatures, to prescribe their expenditure, and to employ this Audit Department for their own purposes. Therefore, while I would advise the co-ordination of Provinces and States in a common audit organisation, and they should avail themselves of the present Indian Audit Department for that purpose, I would do nothing which would set up any outside authority as against the Legislative sovereign authority, or the sovereign authority of the Indian States, which would detract from their power to provide for whatever form of independent audit each may think it proper to institute. That will dispose of the question.

Mr. Sastri: I do not follow what you mean. Do you mean that you would lend your Central Audit Organisation?

Mr. Iyengar: We will place it at their disposal. For instance, take the subject of agriculture, or of any of the other services common to all the Provinces, there is a scheme of co-ordination and a common interest. There are various subjects of Provincial importance in which the Central Government, or any Federal Government for that matter, may find it proper and necessary to do whatever is essential for co-ordinating their work, and for putting them in touch with similar organisations outside, or governments which do similar work, such as, for instance, the International Convention

of Labour, or of Hygiene, or of Sanitation. For all those purposes, I take it, the Federal Authority will be in operation; and, in doing that, they will have to act in co-operation and co-ordination with Provincial Governments.

Mr. Gavin Jones: Do you agree to the borrowing?

Mr. Iyengar: The borrowing I would put into the hands of an Indian Loans Board. That Loans Board will be the body through which, as in Australia, Provincial Governments, if they want to do so, can secure their loans. When the Central Reserve Bank is established, I take it that the Government of India will cease to have any Banking functions either for the Provinces or for the States, and it is open for the Provincial Governments and for the States to avail themselves of that Loans Board for their operation.

Dr. Shafa'at Ahmad Khan: The operation of what?

Mr. Iyengar: Loans.

Dr. Shafa'at Ahmad Khan: Not co-ordination of all expenses?

Mr. Iyengar: No; co-ordination in respect of common services which they may agree to. It is purely by agreement. Certainly it will not be an imposition.

Sir Akbar Hydari: Do you want to part with the Reserve Bank?

Mr. Iyengar: I am only saying that, when the Reserve Bank is established, the Government of India will cease to fulfil any banking or currency functions.

Sir Akbar Hydari: With regard to the question of administering loans, and so on, would you take it over as part of the duties of the Reserve Bank?

Mr. Iyengar: No. I would place the borrowing powers, or the provision of loans for States, or for the Provinces, or for the Federal Government, in the hands of an independent Loan authority.

Mr. Gavin Jones: To control it?

Mr. Iyengar: Yes; to be their agents.

Mr. Gavin Jones: Do you mean to control or to advise?

Mr. Iyengar: It may perform the functions of a bank. I think that we have a parallel in Australia. If we start them with certain resources, and they are given the authority to disburse loans on their own terms, they may perform the functions of a bank very easily. I will develop that scheme later. We are not on it to-day.

Similarly on the question of railways, I shall say only one word. Railways, so far as we are at present agreed, are to be under Federal control in so far as they are now under the Central Government's control—in respect of particular State Railways—through the Railway Board. I would develop the matter, and I would place before the Committee the suggestion, in regard to these railways, whether it may not be possible to preserve the proprietary rights or the interests which the States may possess under a scheme of common ownership, vested in an authority who

could distribute profits in proportion to the proprietary rights of these units. That is a matter also which I am only suggesting, because they have such a scheme in operation, for instance, in my Province, where a District Board and Railway Company own a common railway. There is also the question whether the surplus revenue, *i.e.*, the profit now earned by Indian railways, should be a Federal asset, and to what extent, if it is to be a Federal asset, the units representing the States should be allowed to participate in the benefits of that asset, and what concessions they may make as against that. Those are matters which, I think, had better be thrashed out in the sub-Committee. It may be, for instance, that if we find that the railways really cease to yield a profit, and all that can be done for some time is to see that the Indian railways are able to maintain their reserves and sinking funds, they can eliminate railways from this discussion as a revenue yielding source; and they will then be in a position to discuss what other financial resources should be commonly shared, and what other financial liabilities should be commonly incurred by the Indian States and the Indian Provinces.

(The Committee adjourned at 4-35 p.m.)

PROCEEDINGS OF THE THIRTIETH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 25TH SEPTEMBER, 1931, AT 11-0 A.M.

HEAD 4.

Distribution of Financial Resources between the Federation and its Units.

PRELIMINARY DISCUSSION—*concld.*

Mr. Iyengar: My Lord Chancellor, I am sorry that I omitted to refer yesterday to one important matter which I wanted to mention before I concluded my remarks. It is in regard to the question of tributes. The suggestion which is made in the official Note is that the new Federal Budget should be prepared on the assumption that the tributes from Indian States should be retained as a receipt in the Federal Budget. That question is further examined in the Note in paragraph 31, and I would invite the attention of the Committee to what is said there:—

> "It has further to be remarked that the objections of States to continuance of these payments would not be based solely on the plea of their being supplementary to the ordinary scale of contribution by Federal Units. There is the equally cogent plea that these payments denote relations of a feudal character and that the States will admit no such relationship between themselves and the Federal Government."

I would like to emphasise this—that whatever may have been the nature, the equity, or the propriety of these levies in the past (and

I know that many Indian States have felt the implications of these tributes very strongly) there is absolutely no reason now to accept any such principle. It would be fundamentally wrong to accept any such principle as tributes from any States to the Federal Government. The question whether the States should contribute to the expenditure of the Federal Government by definite contributions, or by allocating definite resources, or through taxation, stands on a different footing. Therefore I would suggest that, in framing this Federal Budget, we must get rid of these tributes as an item of receipts. The official Note apparently would find a difficulty in calculating the Budget if as large a sum as 70 lakhs is taken out; but I feel, in view of the present uncertainties, and in the event of the reconsideration of the whole position of our future financial resources which has to be made on account of the financial situation which confronts all the countries of the world to-day, it is a wholly unnecessary complication, and the maintenance of a running sore, if we allow these tributes to continue in any shape or form in the coming Federal Budget, for whatever purpose they may be needed. If the matter is treated as a contribution from the States, it leads to the other question as to what similar contributions should be levied from other States or Provincial Units in the Federal Government for the same services for which these tributes will be appropriated. All these complications will be avoided if we once and for all get rid of the tributes and treat the obligations of all States and Units of the Federation on an equal footing.

Sir Maneckjee Dadabhoy: My Lord, It is no use my disguising the fact that I am approaching the discussion of this subject, not only with a considerable amount of diffidence, but with a nervousness in view of the many entanglements involved in the question of Federal finance. My difficulty is more emphasised by the fact that we in India are starting at the wrong end. In all other countries where federation has prevailed and has been worked, we have found that they have a number of clearly defined Units. They have not only those clearly defined units, but if we take the United States of America—if we take Germany or other countries with federal forms of government—we find that the States possess both individuality and consciousness. In India, the Provinces have been governed under the three Reforms by a system of government which entirely differs from the units to which I have referred. In India, as was correctly pointed out in the Simon Commission's Report, a number of administrative areas have grown up almost haphazard, as the result of conquest, supersession of former Rulers, or administrative convenience. There has not been, unfortunately, with our Provincial Governments, an introduction of that system of approaching or preparation for the assumption or the adoption of a general federal system. In the other federal countries the system had been completed, had been perfected by the formation of separate entities, not only in the matter of internal economy, but also in the matter of their Parliaments, and also in the matter of their Reserve Banks—which seems to me to be one of the most indispensable factors in a

scheme of Federal finance. The formation of a Reserve Bank, to my mind, in India at present, is far distant, on account of various circumstances to which I need not refer here, for I shall have another opportunity of speaking on that subject.

It is true that, during the last few years, there has been a distinct growth of provincial consciousness in the Provinces as well as in the Central Government; but political consciousness, My Lord, is entirely distinct, in my opinion, from financial consciousness. And that growth has still not matured, so what we now have to do is to find out a system of Federal finance for India which is not wholly natural, but which is going to be a hot-house product. We have first to design the hot-house, and then to bring in different plants on a common soil. You have now on this new soil to grow your Federal finance. As I stated just now, we have not all these perfected schemes, and so we have to go in for a sort of hot-house product. Our difficulty is enhanced by two distinct facts. The first is that, at present, all the Provincial resources are depleted, and we are starting this Federation at a time when the Provinces are ill-prepared for the adoption of a general scheme of finance. Secondly, our difficulties are also enhanced by the problem of the Indian States coming in. I may also state at this stage that, in discussing this question, we have not, up till now, heard the views of the Indian States as regards the financial grounds on which they would come into the Federation.

The whole question of Federal finance, in my opinion, depends on the domain of taxation, that is, the taxes which we shall allocate to the Federal Government and to the Provinces. It therefore becomes necessary in my opinion, that I should deal with point (iv) first—because that point seems to me to be the foundation of the whole thing—and that I should give my opinion on the other questions which were raised by Your Lordship after I have discussed that question. In forming the scheme of finance, Sir Walter Layton and the Government of India have unfortunately gone on certain indefinite assumptions. We are informed that the Provincial revenues are going to remain stationary, and that the Central revenues are going gradually to expand. In this scheme, it has been attempted in time to take away the entire field of Income-tax from the Federal Government, and gradually to allocate the payment of that revenue to the Provinces. As far as I understand, only Customs, Salt, Super-tax, Commercial tax, and Government share in the Reserve Bank profits have been reserved for the Federation.

It has been argued—and we have also heard from His Highness The Maharaja of Bikaner—that the Federal Government should not have the right to impose " direct " taxation. My Lord, in this matter I am distinctly of opinion that the Federal Government should have complete domain both over " indirect " taxation and " direct " taxation, and that it would not be possible on economic grounds to deprive the Federal Government of the right to

impose "direct" taxation. So far, at present, our revenue from this source of "direct" taxation is about 20 crores. I mean Income-tax. Allowing 3 crores for cost of collection, there is a net revenue of 17 crores. In considering this question, I would request this Committee also to bear in mind that, with the contemplated separation of Burma, we shall lose about 5 crores 44 lakhs in our Income-tax revenue. That will considerably reduce the total amount of that income; and if on the top of this, there is the scheme suggested of providing the Provinces with financial assignments and half of this amount of Income-tax raised is to be transferred to the Provinces, I am afraid it will make a big hole in Federal finance; and it will be very difficult to obtain the replacement of that revenue from other sources.

The present scheme is to assign half this revenue to the Provinces and to permit the Provinces to raise another surcharge to the extent of half of what is assigned; in other words, one quarter of the total income. I do not know, Sir, how the Provinces will receive this—the people; but if I understand the psychology of our people, I say, Sir, that the imposition of a surcharge on half the Income-tax assigned to the Provinces will not be received with any favour by the Provincial Legislative Councils. It is a good inducement given to them in the matter of the enhancement of their revenues; but, My Lord, the Income-tax has been considerably increased during the last decade. Since the War we have had four distinct Acts for the enhancement of the Income-tax revenue. I am corrected here, My Lord, by my friend Mr. Rama Rau, who says that the Central Income-tax collected in Burma was about 2 crores. I stand corrected. That 5 crores 44 lakhs which I mentioned refers to Customs. I am much obliged to my friend, Mr. Rama Rau, for giving me that information. However, as I said, the enhancement will not be received favourably by the Provincial Councils. Income-tax has been raised recently on four occasions. A year ago, in 1930, the Super-tax was raised by one pie; but this year Income-tax in India was raised from 19 pies to 26 pies, and it has become a considerable burden. Sir George Schuster, when he introduced his financial Budget in India, made a distinct promise that this was only a temporary measure and that, as soon as the Budget was balanced, this heavy rate of Income-tax would be done away with. My Lord, unfortunately, things have shaped entirely differently since the last Budget was passed; and this year, I am afraid, we are going to have a much larger deficit in the Central Budget than last year; and there is no hope of this heavy taxation being decreased.

I am referring to this matter, My Lord, because Sir Walter Layton, in one of his recommendations, stated that the rate of Income-tax was low, and that, for the purpose of successfully carrying on the Federal finance, the rate could be raised—that it was a low rate and ought to be raised. Of course, Sir Walter Layton did not anticipate that, before the Federation came into operation, the Government of India would be pressed with the

necessity to raise that tax by 40 per cent. this year. Therefore, I am referring to this matter in order to remove all doubt from the minds of the members of this Conference and to tell them plainly that they should not entertain the least hope of Income-tax revenue expanding in any way and being a source of relief to the Federation.

Sir, as regards Customs too, I entirely differ both from Sir Walter Layton and the conclusions arrived at by the Government of India. It is true that our Customs duties have increased since the War, but there are entirely different reasons for that increase. Now, with the lower value of commodities, it is not a practical proposition to expect that the Customs revenue will either substantially increase or will even remain stationary at its present level. India is an agricultural country, and, on account of the low values of important commodities such as wheat, rice and other cereals, it is impossible now to compete in the matter of exports with other places like Russia and Australia. Therefore, we shall not in the near future be able to export largely. You may ask why this should affect our Customs revenue which depends upon imports only; but in order to maintain the balance of trade, unless you export, receive money and pay for your imports by exports, it is not possible to maintain import to a very considerable extent. Therefore, in future, there is every likelihood that, instead of Customs revenue expanding, it will gradually diminish. Recent events—the events of the last week which have taken place in Bombay—will also affect our imports very considerably, and our revenue from imports will not be maintained. Further, if Burma is separated we shall lose 5 crores 44 lakhs under this head.

Further, it is contemplated that, in process of time, the Salt-tax shall be gradually entirely assigned to Provinces and disappear altogether as a Federal item. I confess that, logically, the Provinces are entitled to this revenue; there can be no question about it. But as a matter of administrative convenience, and for the purpose of maintaining a uniform rate of taxation, and in order to stop the Provinces from quarrelling amongst themselves, salt has been from the very commencement made a source of Central revenue. If you then seriously think of parting with the Salt-tax, I do not know what revenues you are going to have left with you for the purpose of the successful management of the Federal Government. It will cause serious complications. We shall be compensated by being told that there will be a transfer of Commercial Stamps to the Federation. That will only give us a very paltry sum per year, and will not make up for the heavy losses which are contemplated by the transference of Income-tax and Salt-tax to the Provinces.

In this connection, speaking about the Federal Government, it is suggested that the Federal Government will have to bear the liability for the whole of the administrative charges which have up to now been borne by the Government. I do not think this

would be fair to the Indian States if we want them to come into the Federation. This question will have to be seriously considered and an allocation of financial responsibility will have to be carefully discussed.

As regards income from the profits of the Reserve Bank, I may tell this Conference that that is a mere matter of speculation at present. We are in an entirely different position to-day from what we were. The banks in India, not unlike the banks in England, have lost their big business. Their profits are considerably diminished. They have been compelled to reduce their dividends. Therefore, even if you are in a position to-day to start a Reserve Bank (which in my opinion is a *sine qua non* for the establishment of a Federation) you need not expect much or even anything substantial by way of profits from the Reserve Bank.

How, then, is the income of the Federal Government to be obtained? It is suggested that the graduation in intermediate incomes be steepened. It has already been steepened. It was steepened last March by the Finance Bill which was introduced in India, and there is absolutely no further room for any improvement in this matter. In fact, the wage-earners and the middle classes in India are in an extremely poor state, and it would be difficult to obtain from them any income by further steepening the graduation of intermediate incomes.

It is also suggested that the present exemption limit should be lowered. I do not think any of my Indian friends here will agree to any such proposition. The present limit is 2,000 rupees, which has already affected heavily many people; and I do not think it would be a step which would, at any rate, be welcomed by a large body of politicians.

It is also stated that our income may be expanded by amending the law as regards foreign investments. In regard to this, a Bill was introduced by Sir George Schuster last year which was circulated in order to elicit public opinion. I am not in touch with it, but at any rate I know that something can be said in regard to it, because, to the best of my information, about 26 crores of rupees were transferred for foreign investment during 1929-30 and 30 crores during 1930-31. I am afraid we shall have more trouble now that we have gone off the Gold Standard; and, very probably, those people who have sent money to this country will burn their fingers over it.

Then the most important point which has been suggested towards increasing the income of the Federation is the abolition of exemptions of agricultural incomes. It is a very difficult proposition. It has taxed the minds, not only of the Government of India, but also of the Provinces. This matter has been very carefully considered and thoroughly gone into by the Taxation Committee; and I think that, when we are starting a new constitution, which has to be worked with full harmony, good will and sympathy, it is

to be feared that a measure of this character will not be received with any sympathy in India just at present. Of course, the Provinces might make experiments in their own way by passing legislation, if they are in a position to do so; but as a Federal source of income or as a " Central " source of income, it is not likely to have many supporters.

It is also suggested that the Provinces or the Central Government may go in for death duties, and that these death duties might produce large sums of money and help the effective carrying on of Federation. My Lord, I entertain very strong views on this question. We have in India a sort of probate duty as well as what we call succession duty; but those measures apply in quite a different field. Those duties it would be not only difficult to adopt, but they would be received in India with a considerable amount of resentment.

Mr. Joshi: By whom? ...

Sir Maneckjee Dadabhoy: I will tell you, if you will just wait a minute. It is purely a socialistic doctrine. In my opinion, it is wrong in principle. I do not think India will agree to it, for two or three reasons. In England it has worked havoc. It has ruined aristocratic families and extinguished extensive capital; and the result has been unemployment in the country. In three generations a man's fortune is wiped out. That money, which could have been appropriated for the establishment of industries for the purpose of employing men and giving them food, has all been taken away by the State. In England what has happened? You imposed the death duties and you paid the dole. This death duty is impossible in India from another standpoint, and that is the present position, the joint coparcenary state of a Hindu family, which makes it difficult for the introduction of this tax among Hindus, among a large body of people. The joint coparcenary property and the law of survivorship which prevail in India make it absolutely difficult for the imposition of a tax of this nature; and if a large class, the largest community, cannot be brought within the purview of the Act, it would be futile to try to extend this measure of taxation to other communities.

Therefore, the question for us now is to enquire whether the resources of the Federation and of the Provincial Governments will be sufficient to meet the necessary expenditure. My Lord, I have not discussed this subject with the object of putting a wet blanket on the question of Federal finance; but I want to enable our friends at the Round Table Conference to bear these facts in mind and to find out in what way the resources can be made available for the purpose of federation. It was for this reason that, when I started, I said that I was nervous of the herculean task which we are undertaking; and though our deepest sympathy is that federation should take place and that the success of it should be assured, I feel on the question of finance extremely doubtful, and I think it will tax our energies to a considerable extent to find

out both the Provincial and the Federal resources for the purpose of carrying on an expensive Federal Government.

The next point is, what financial adjustments will be necessary. Of course, this will be discussed in the sub-Committee to which you, Lord Chancellor, have alluded; and as it is truly a matter involving many intricate points I will not trouble the Committee with it now. I would only ask, in this connection, for my friends to bear in mind that, in framing a Federal or a "Central" Budget, it will be difficult to make any estimates of our income or of the values with precision and with a measure of rigidity or certainty.

These, My Lord, are my general remarks with reference to Federal finance. I have dealt with subject (iv), and I shall very briefly answer the other points raised by you.

As regards the first query:—

> "Is there to be a 'Central' Budget distinct from the 'Federal' Budget?"

I am distinctly of the opinion that there should be one single Budget. Otherwise a lot of complexities will arise owing to the division of taxes, and particularly as the States do not want "direct" taxation to be imposed by the Federal Government. I entirely agree with the valuable Note which has been prepared, My Lord, for you; and I, for one, am looking forward to the day—though it appears to me that that day is very distant—when we can cheerfully and willingly go in for a scheme for the elimination of all distinctions between "Central" and "Federal" finance, involving separate funds, separate Budgets, and the unpleasant and difficult task of making various allocations.

As regards question (ii), I think that there could be no question about the future debts. With regard to the future debts, I agree with what my friend, Sir Provash Chander Mitter, said yesterday, when he spoke in a very able manner upon this question. I fully agree with him that the future debts should be wholly Federal.

As regards the past Public Debt, there may be a division of opinion; but I think that this Conference will be acting with wisdom if even in the matter of past debt, they make it a Federal matter. It will be good for the safe working of the new Federation that the past debts should also be treated on those lines. I know of the serious difficulty involved in this matter by reason of our unproductive debt, and perhaps, it would affect the Indian States. If I may say just one word about this unproductive debt —my friend, Mr. Iyengar, alluded to it yesterday, and he pointed out in his vigorous manner that, after all, it is only a question of 172 crores, and that these were partly War debts; but I think that it would be prudent and judicious to treat them as a matter of common concern. Whatever budgetary distinctions we may make, as the past liability, in my opinion, will have to remain a charge upon the whole of the revenues of India, and as we could not dispense with that liability, I think that it would be right

that it should be made a Federal subject. If, in other matters, we treat our Indian Princes in a generous way, by abolishing their contributions which we now take—which amount to a figure of 70 lakhs, to which I shall hereafter refer—I think that the Princes ought cheerfully to come in and take the responsibility, in the proposed Federal Constitution, of this unproductive debt. In this connection I entirely agree with the remarks of our present High Commissioner. He said:—

> "The loans we have raised in the past in England under Acts of Parliament are charged on the revenues of India, any attempt on our part to earmark such items of such revenue in future for certain purposes may contravene the provisions of these Acts, and may indeed engender suspicion in the minds of investors in this country, and react on our credit generally."

I think that these are very significant words, and that it is a very sensible suggestion. I hope that the Princes will co-operate with British India in the matter of taking over this unproductive debt, and regard it for all purposes as a matter for the Federation.

As regards sub-head (iii), I entirely agree with my friend, Sir Provash Chander Mitter, that both the receipts and the expenditure of the British Indian Provinces, which are not Governors' Provinces, should be treated as Federal. After all, there is only a small loss of 1 crore of rupees, and I think that it will be advisable for the Federal Government to treat their case as a Federal subject.

Coming to question (v), the matter has been partly covered by my speech; but Sir Provash Chander Mitter said that half should be made available to the Provinces and after some time, the whole of the revenues should be recovered by the Provinces. I do not feel myself in agreement with Sir Provash Chander Mitter in this matter.

As regards the item of tribute—74 lakhs of rupees—I think that it would be wise to abolish it. I do think that the payment of practically one-third of this total amount by the Mysore State alone must cripple its industries and affect its resources. Therefore, I feel that, if the States come in with us, and adopt the policy of give-and-take, and agree with us in other matters, there ought to be no hesitation as regards the entire abolition of these tributes. I think that the Federal revenue generally will be able to bear the strain of this loss of 74 lakhs of rupees, as the other result is far more valuable, namely, the co-operation of the Princes in our financial adjustments.

Point (vi) involves a somewhat intricate decision. It is true that the Customs revenue of the Central Government has risen from 10 crores to 50 crores in the last few years. The Customs duties of the Government of India have been the largest and the most elastic source of Central revenue. We cannot lose sight of

the fact that this substantial increase in Customs revenues, and also this continuous expansion, has increased the burdens imposed on the population of the Indian States. The States as well pay for the goods imported into their territories; and, therefore, this matter is one which requires careful consideration and adjustment. It is true and it is rightly said that the Customs duties are associated with the protective policy, and that the Indian States should have no ground of complaint, because they protect their industries, and enable them to go in for a larger programme of industries in their own territories. But it must also be borne in mind that, in all the States, there are not such industries established. There are some States which are doing well. I know that, in many States, textile industries are now flourishing on account of many reasons. Of course, they are free from the Income-tax and Super-tax, which are very large burdens, and they also enjoy exemptions from the stringent provisions of the factory legislation, which, as Mr. Joshi reminds me, has handicapped in many ways industries in British India. No doubt the States will have to make sacrifices; and I understand they are willing to make reasonable sacrifices.

H.H. The Maharaja of Bikaner: It all depends.

Chairman: Who is the judge of the reasonableness?

H.H. The Maharaja of Bikaner: And we certainly do not want all the sacrifices to be on the part of the States for the benefit of British India, or anyone else.

Sir Maneckjee Dadabhoy: No, Your Highness.

H.H. The Maharaja of Bikaner: I am sure you were not suggesting that.

Sir Maneckjee Dadabhoy: I have asked that we should wipe off these tributes which we are receiving from the Indian States.

H.H. The Maharaja of Bikaner: How much is the debt compared with the 70 lakhs you are remitting us?

Sir Maneckjee Dadabhoy: But there are other things. Look at the benefits which indirectly the States will get, both financially and politically.

H.H. The Maharaja of Bikaner: Will you not explain those for our benefit? We shall then be in a better position to judge?

Sir Maneckjee Dadabhoy: Your Highness, I have already explained that in my speech the other day. Now question (vii) is very very important. Of course, we hope His Highness the Maharaja of Bikaner will throw considerable light on this subject.

H.H. The Maharaja of Bikaner: I am not dealing with these questions. Some other States' Delegate will.

Sir Maneckjee Dadabhoy: According to the Report of the Butler Committee, the consumption of the Indian States represents something like 16 per cent. of the goods imported. The States also claim a share in the Salt tax, Railways receipts, and other

Budget items, though they are small in amount. They also claim a share in the proceeds of Excise.

Dr. Ambedkar: Railway receipts?

Sir Maneckjee Dadabhoy: If you read Sir Walter Layton's Report you would know that. The States also claim a share in the proceeds of Excise. Then, on the other hand, there are counter claims made by British India against them. The cost of the Defence of India has increased from 30 crores to 50 crores in the last 15 years. If a proportion is worked out, the Indian States would legitimately have to pay about 5½ crores a year for this Defence. The Indian States cannot possibly say that the maintenance of this Defence has not helped them. It gives them security; it gives them protection; it gives them security to carry on their programme and collect their own revenues in their territories. However, as I say, the matter is a contentious one, and the Butler Committee recommended the appointment of a special committee to go into it—to settle the claims and the counter-claims.

H.H. The Maharaja of Bikaner: Will you not in this connection also read out paragraph 48 of the Butler Report.

Sir Maneckjee Dadabhoy: I have read everything, Sir.

H.H. The Maharaja of Bikaner: Not that we are very much in love with the Report; but still you might as well read that paragraph.

Sir Maneckjee Dadabhoy: I think we cannot allow you to go scot free altogether, irrespective of the Butler Committee's decision. You have to pay.

H.H. The Maharaja of Bikaner: Why not read out paragraph 48 also?

Sir Maneckjee Dadabhoy: You can read it. I have read it and I know it very well. My contention is that, if this committee had already been appointed, the matter would have been settled by this time.

Mr. Jayakar: Will you not read paragraph 48 for our benefit?

Sir Maneckjee Dadabhoy: I have not got the book here. His Highness will read it. My contention is this, My Lord. I submit, in this matter, the claims and counter-claims are of practically equal magnitude. The Butler Committee recommended that they should be separately examined, and the reasonable claims of the States or groups of States to a share in the Customs revenue, and the second question of the adequacy of the States' contribution to Imperial burdens, should be decided by this committee. I say that, unless this question is finally settled, either by the appointment of an expert committee or between the States and British India by mutual agreement, it is impossible to settle the question of Federal finance. I would also like His Highness The Maharaja to bear in mind the ordinary doctrine that a claim by a single Unit of the Federation is not ordinarily admissible.

Then question (ix):—

"Should the Federal Government have any control over Provincial borrowings? Should there be a Federal Loans Fund?"

Here also I am in agreement with Sir Provash Mitter that we should have a Loan Board to control the borrowings and guide the Provinces in the matter of borrowings, keeping a control and strict supervision over all their borrowing programmes. If the Federal Government is to be made a success, in my opinion, the Federal Government should keep strict control over all Provincial borrowings. The Provinces borrow, not on the credit of their own Provinces; they borrow on the credit of the whole of India. Their borrowing involves the credit of the whole of India. There may be prudent borrowing; there may be cases of improvident borrowing. Therefore it is essentially necessary, in my opinion, that strict control should be maintained over Provincial borrowing. This also has been recommended by the Government of India in their Despatch. I am also distinctly of opinion, in connection with the questions that the Provinces must accept certain obligations, including, in particular, debt charges and the salaries of members of the all-India Services employed within their limits.

Then, as regards the last sub-head, My Lord, I am also of opinion that the Federal Government should continue the existing policy. At present the Central Government holds the Provincial Balances in Government Treasuries and prescribes the minimum Balances to be kept by Provinces. In my opinion, there is no justification or warrant for altering this practice; and I have not even seen that there is any strong demand for altering the system which at present exists. When the Central Bank—the Reserve Bank—is created in India, that institution will, of course, take over this function; but till those functions can be taken over by the Reserve Bank for the whole of India, I think it is necessary that the Provincial Balances should continue to remain with the Government of India. I also think that the Federal Government should perform the services on a commercial basis, charging a reasonable amount for this purpose, and the Federal Government should not attempt to make any profit out of these Balances. Here comes in another question, so far as the Federation is concerned—what will be the position of Indian States with regard to these Balances, I mean their own Balances? That matter will also have to be carefully considered, and I should like to know the opinion of the Princes before I say anything about it.

Lastly, what I have to say in this connection is as regards the residuary powers. After the Federal, "Central" and Provincial subjects have been settled and schedules drafted, I am of opinion that the residuary powers should be left in the Provinces. Our aim, and also, I understand, the general aim, is to make the Provinces as far as possible autonomous, to make them self-contained, to give them all possible resources for filling up their depleted

treasuries, and to make them self-supporting; and, in view of the considerations which I have urged in the first part of my speech as to the difficulties which these Provinces will have in meeting their expenditure, I think it is only right and proper that the residuary powers of taxation should be left in them. The Central Government is not likely to be very much affected or prejudiced by this, because, if the Federal Government wants to go in for any other or new form of taxation, it could always do so with the consent and sanction of the Provinces.

Mr. Joshi: I wish to deal only with one point and that very briefly. That point is one which was raised by His Highness The Maharaja of Bikaner, namely, that the Federal Authority should not impose any " direct " taxation. I am not proposing here to make any suggestions for the distribution of the present resources. My only point is that no constitutional restriction, as was proposed by His Highness The Maharaja, should be imposed upon the Federal Government. The Federal Government's power should not be confined only to the imposition of " indirect " taxation; it should also have the power of levying " direct " taxation. I feel that each authority in India, whether it is the Federal, "Central" or Provincial, should be able to keep a proper proportion and balance between the " direct " and " indirect " sources of revenue, in order that the burden of these taxes should fall upon the people in proportion to their ability to bear that burden. If the Federal Authority depends only upon " indirect " taxation for its maintenance, the burden, in my humble judgment, will fall more heavily upon the poorer classes, considering their ability to pay. I feel that this is unfair—especially so as the Federal subjects, as at present proposed, exclude the welfare of the workers and of the masses. A large part of the proceeds will be spent upon Defence; and, in my humble judgment, most of this expenditure—namely, the expenditure upon the Army—is for the benefit of those people who have a stake of property. I believe that the statement of Karl Marx, that the workers have nothing to lose but their chains, still holds good. Moreover, My Lord Chancellor, considering the strength of the various political parties in the Federal Legislature, to confine the Federal taxation only to " indirect " taxes will lead, in my humble judgment, to extravagance of expenditure. From what little experience I have of the Indian Legislatures, I have found that the pressure for economy on Government becomes strong only when there are proposals for the increase of income-tax. We know what happened only this year. Government easily got their " indirect " taxes passed by the Legislature, but they found it difficult to secure even a small increase in the Income-tax.

Sir Maneckjee Dadabhoy: You are perfectly wrong. I supported it in the Council of State, and it was agreed to without opposition—a substantial increase—in view of the crisis which was prevailing.

Mr. Joshi: I am glad that Sir Maneckjee Dadabhoy was in favour of the increase of the Income-tax. Still, my statement remains true. I am considering what happened in the Indian Legislature. ...

I have nothing more to add. I am very glad that my proposal was supported by Mr. Rangaswami Iyengar; but I am more glad that my proposal has the distinguished support of Sir Maneckjee Dadabhoy.

Sir Muhammad Shafi: It is not my purpose this morning to enter into a discussion of the various points covered by the questionnaire which Your Lordship has circulated to us. The issues, as well as the difficulties, connected with Federal finance, with which this Committee is confronted, have been well brought out in the two Memoranda prepared for us in the Finance Department of the Government of India, and the sub-Committee which it is proposed to appoint will no doubt deal with all those issues and difficulties. I reserve to myself the right of expressing my opinion on those issues and difficulties when the sub-Committee, after a very careful examination of all the pros and cons, have submitted their Report.

I propose this morning to offer only a few observations on one very important aspect of our Federal finance. Lord Chancellor, the two Memoranda prepared for us in the Finance Department of the Government of India have brought out the budgetary difficulties with which we are confronted as a result of the division of subjects into three groups—Federal, " Central " and Provincial. Some of us foresaw these difficulties at the earlier stage of this Conference, and made an earnest appeal to the advocates of both schools of thought to reduce these three groups to two—Federal and Provincial. While, on the one hand, we appealed to the advocates of uniformity, recognising that uniformity was desirable to a certain extent, not to carry this doctrine of uniformity to the length of a shibboleth, we appealed to Their Highnesses for the abandonment of what I characterised on that occasion as our present-day mentality, and to visualise the position as it will come into being after our scheme of all-India Federation has materialised. I ventured to point out on more than one occasion that, what will happen when the proposed scheme of all-India Federation has materialised, will be this—that the internal autonomy and sovereignty of the Indian States will be fully protected, and, in addition, the Indian States will become equal partners with British India in the control and administration of all questions common to the whole country—a privilege which, I venture to think, at present they hardly enjoy.

Therefore, I ventured to submit that it was in the interests of Their Highnesses that they should look at this question of division of subjects into Federal and " Central " with a liberal eye. I went further, and I suggested that, in this connection, we might well follow the example set before us by the Canadian Act, so

that, even with regard to legislation which actually is undertaken by the "Central" Legislature, the autonomy of the Provinces and the autonomy of the Princes will remain protected. I once again venture to appeal to both parties this morning to give very careful further consideration to this important matter, so that this complication—this difficulty in the budgetary side of Federal finance—may be averted.

In this connection, I wish to invite the attention of this Committee—apart from the difficulties of allocation, and so on and so on, to which my friend Sir Maneckjee Dadabhoy has made a brief reference—to one or two points which I think are worthy of consideration by the sub-Committee which we are appointing. Now, there will be the Central Executive. We are all agreed that with the exception of the Crown subjects there will be joint responsibility of the Cabinet. This Cabinet will have on it at least one representative of the Indian States. Now, when the question of the Annual Budget is first discussed in the Cabinet—I have had experience of six Budgets myself in the Government of India, and of discussion of them within the Cabinet—will this representative of the Indian States have a right to take part in the Cabinet discussions relating to the Budget connected with the "Central" subjects? If the reply is "Yes," I say that it is absolutely inconsistent, from a constitutional point of view, with the position that you are creating. What right has he, from a constitutional point of view, to enter into a discussion of "Central" subjects? But if he is not to take part in those discussions, what about your joint responsibility? The position thus created is in the highest degree anomalous, I venture to say.

Now let us come to the discussions in the Legislature. Where are you to draw the line? It will be very difficult indeed to draw the line, for the repercussions of some of the decisions taken by the Legislature, in connection with some of the "Central" legislation, on the Indian States, may well entitle the representatives of the Indian States to claim in the Legislature that they have the right to take part in legislative discussions during the discussions of certain subjects, while the representatives of British India will say that, these subjects being "Central" subjects concerning mainly British India, the representatives of the Indian States have no right to take part in those discussions. You will create for yourselves, if I may venture to say so, by the recognition of this "Central" group, neither fish nor fowl nor good red herring (as I call it). You will land yourselves into difficulties which, I submit, are in the highest degree detrimental to the best interests of India.

I therefore once again appeal for reconsideration of this matter, and I appeal to the representatives of Their Highnesses who will be on this sub-Committee, as well as to the representatives of British India who will be on this sub-Committee, fully to consider this matter. After all, there are only nine heads which have

been grouped together as " Central " subjects. It seems to me that some of those heads may well be relegated to the realm of Provincial subjects, and others may well be included amongst the Federal subjects.

Sir Tej Bahadur Sapru: What does Sir Muhammad Shafi mean? Does he mean that there should be provincialisation of Civil Law and Criminal Law, or control of Mineral Development?

Sir Muhammad Shafi: I do not intend to provincialise that.

Sir Tej Bahadur Sapru: I thought that Sir Muhammad Shafi said so.

Sir Muhammad Shafi: I never said so. I said that some of the nine subjects might be provincialised, and others might be federalised, and the group of " Central " subjects might disappear. I did not say that Criminal Law should be provincialised. I did not say what should be federalised or what should not be federalised. I never said a word about what should go to the Provinces.

Sir Tej Bahadur Sapru: No; but I should like to be informed which, in Sir Muhammad Shafi's opinion, are proper subjects to be federalised, and which, in his opinion, are proper subjects to be provincialised.

Sir Muhammad Shafi: If my friend, Sir Tej Bahadur Sapru, had waited for just one minute, that was exactly what I was going to suggest. I will offer a few observations, and that is all. So far as Criminal and Civil Law is concerned, I have already expressed my opinion at an earlier stage of our discussion that uniformity in Civil and Criminal Law is desirable. Consequently, for the sake of uniformity, I am prepared to federalise that subject, subject to my observation that the Canadian model should be followed in that respect. My friend, Sir Tej Bahadur Sapru, will remember that I dealt in detail, in one of my speeches, with that part of the matter. As regards the remainder of the subjects, personally I see no difficulty at all. I will give only one or two examples. I see no difficulty in the Survey of India being federalised and made a Federal subject. It is obviously a subject which ought to be Federal; and, if I may venture to say so, Their Highnesses, who will be partners in the Federal Government, ought to agree to that subject being federalised. With regard to Archæology, what point is there in its remaining necessarily a " Central " or a Federal subject? Each Province can look after its Archæological Department. Why should not that be provincialised, or, on the other hand, it may be made Federal; it does not matter. The point is one which can be easily settled by the sub-Committee, and then decisions can be arrived at later by the main Federal Structure Committee. I am not insisting upon the federalisation of the one or the provincialisation of the other. My point is, why should this group of " Central " subjects be created, with the result that our Federal finance, our Budget, our admi-

nistrative machinery, the details regarding the control, and so on, should be as complicated as they will be if you maintain this third group? Why should we have any third group at all? Why cannot we after careful consideration, eliminate this third group by absorbing it partly in the Federal group and partly in the Provincial group? I venture to make an earnest appeal to representatives of both schools of thought to give their further careful consideration to this matter, and to see that the elimination of this third group, and its absorption partly into Federal and partly into Provincial subjects, will result in our Federal financial machinery being simplified, and in the avoidance of many difficulties and many complications which they will otherwise have to face. That is all that I have to say.

Sir Tej Bahadur Sapru: While I entirely sympathise with the desire to reduce "Central" subjects to the absolute minimum, I do not see why there will be any difficulty in Federal finance for that reason.

Sir Muhammad Shafi: You will not have two Budgets, but only one Budget.

Sir Tej Bahadur Sapru: I should like to put a question. Our real difficulty is that the Federal source of income is not enough, and we have to look to British Indian taxation. Supposing that all subjects are either Federal or Provincial, the Indian States are not willing to have "direct" taxes, and we are reduced to the position where we may have to submit to "direct" taxes. Therefore, Sir Muhammad Shafi's point will not touch that difficulty, will it?

Sir Muhammad Shafi: That has really nothing to do with my point.

Sir Tej Bahadur Sapru: Therefore, Sir Muhammad Shafi's point is that he will get rid of the Federal Budget, but the "Central" Budget will still remain if you have to take some portion of Income-tax for "Central" subjects.

Sir Muhammad Shafi: That is an entirely different matter, which has nothing to do with the aspect with regard to which I have invited attention. I have confined myself to one question only.

Chairman: You, Mr. Zafrullah Khan, said on the 14th September, which is a long time ago, that you wanted "Central" subjects done away with and divided between Federal and Provincial. It is the same point. I had written this note to you, but you were not here yesterday when I was here and when I was going to pass it to you. I meant to pass it to you to-day. This is the note:—

> "Dear Mr. Zafrullah Khan, On September 14th you said that you wanted "Central" subjects done away with and divided between Federal and Provincial. Will you kindly tell me how you deal with items 16 and 30 on page 32 of

the Federal Structure sub-Committee's Report, and the Report of the sub-Committee on page 39?"

Do not trouble to answer that now.

Mr. Zafrullah Khan: I want to say only one sentence. My submission was that, in course of time, I hoped to see this distinction done away with.

Dr. Ambedkar: I attach a very great deal of importance to the point which has been raised by Sir Muhammad Shafi. I hope that you will provide us with an opportunity, at least later on, to discuss this question—whether this recommendation made by the Federal Structure sub-Committee of the division of subjects into " Central " and Federal should be incorporated in the Constitution. Another point which I would suggest for your consideration is whether it would not be proper first to consider that subject, and then to refer this matter to the Finance sub-Committee, or whether you should have the Finance sub-Committee and then consider this matter afterwards. That is a matter for your consideration. I should have thought that it would be much better for us to come to some conclusion, one way or the other, whether we retain this dichotomous division in the constitution, or whether we had not better hand over those subjects to the sub-Committee for consideration.

Mr. Gavin Jones: Lord Chancellor, We have now come to one of the most important matters, if not the most important matter, with which this Committee has to deal; for it is quite certain that, unless we can arrange the financial relations between the Federal Government and the states, both British Indian Provinces and the Indian States, we will not be able to have a workable Federal Government. The relations must be arranged so as to give stability, and maintain the credit of India as a whole; and the matter will have to be dealt with by taking a broad view, and in spirit of give-and-take.

In my view, there are three important principles which we have got to bear in mind in considering financial relations. The first is that the Federal Government's finances shall be in a sound position, able to maintain the credit of India as a whole, and able to maintain Defence. The second principle is that it is necessary for a country like India that the Federal Government should be such that the greatest possible measure of self-government will be given to the Provincial States both in matters of finance as well as legislation. This must, however, be compatible with the maintenance of the financial credit of the States just as much as of the Federal Government. The third principle which we have to maintain is that of free trade and free communications between the different States.

To attain this, Sir, we must endeavour to arrange the relations between the Federal Government and the states so as to avoid friction; and I think it is evident from the Note that has been

put forward by the Government of India on Federal finance, that, so long as the distinction between the Federal and "Central" receipts and taxation remains, there is bound to be conflict. Therefore, Sir, I strongly support the suggestion, put forward by Sir Muhammad Shafi, that we should endeavour, if it is possible, to get down to it in a small committee and consider the thing impartially in the interests of the Federal Government and of the states as well. I think we shall then be able entirely to eliminate the "Central" subjects. If this is done, the whole question is simplified.

In the main, Sir, I am in agreement with the Memorandum which has been given to you in regard to Federal finance. I will not go into details. This is a matter for the sub-Committee. The details are important, and will probably have to be carefully considered by a special Commission even after the sub-Committee has decided upon the principles. But there is one point in the Note which I would like to bring to the notice of everybody, and more especially of Their Highnesses, because this is of vital importance to the Federal Constitution. It is that mentioned in paragraph 18, on Federal control of various financial matters in the States. By "States" I mean both British Indian and Indian States. It does not require any argument to maintain that international obligations must be maintained or that Federal property must not be taxed by the States. The difficult matters to settle are the question of internal Customs and Terminal. These are internal "indirect" taxes which can very seriously affect the financial position of the Federal Government; and, therefore, I would ask everyone earnestly to consider these two matters. We do not wish to take away the sovereignty from any State; neither do we wish that any State should lose financially by any arrangement that is made; but at least we must arrange that these taxes, which really in themselves are objectional taxes in any Federation, shall not be increased, and that some means shall be devised eventually to maintain complete free trade and free communications between the different States. Also Sir, the Federal Government must have some control over the borrowing powers of the States. When the Australian Federation was first formed, the Units had free powers of borrowing; but the result was chaotic and now the Australian Central Government controls to some extent the borrowing of the States. That is experience which we should note; and the Federal Government in India will have to control in some respects the borrowing powers of the States.

I have made this statement in general terms. Details will have to be gone into by the sub-Committee. That is all I have to say, Sir.

Colonel Haksar: Lord Chancellor, When you took up Head 4, dealing with Federal finance, you told us that you intended to appoint a sub-Committee after a general discussion. I had not intended to join in the general discussion in this Committee, because

I entertained the faint hope that I might be privileged to serve on the sub-Committee.

Chairman: Yes, that will be so; so that you need not trouble very much now, Colonel Haksar.

Colonel Haksar: I have said this, My Lord, because I feel that this is a subject which even a small Committee would find it exceedingly difficult to discuss satisfactorily within a limited time; and therefore I think everybody in this connection thoroughly appreciated Your Lordship's wise decision to confine examination of Head 4 in this Committee to the general aspects of the question. A further reason why I alluded to my intention not to speak here was that, as I have listened to the speeches that have been made on the subject of Federal finance, I have wondered whether we have discussed Federal finance or whether we have discussed something which is anything but Federal finance. "Federal finance" is a phrase which results from the proposal to unite the States and British India. Therefore, if federation comes, I am sure we should have to base it upon one principle. That principle is an equitable distribution of burdens. May I say at this stage, My Lord, that the present position is not characterised by an equitable distribution of burdens. The position has never been examined. The suggestion that it should be examined has, if I may say so, been scoffed at in the past. Indeed, it has been said that, if the position were examined, it could only lead to the discovery that the States were not pulling their weight—it would lead to an addition to their liability—and therefore it was not worth while examining the question at all. My Lord, speaking from personal experience, it took the States exactly twenty years—not a day less—to have the proposition accepted that, among other things, this question of where the States stood in the economic structure of India might be examined. It was examined with certain results. I am not going to dilate upon those results here.

I have to use any odious word, My Lord; but I feel constrained to suggest that there is great ignorance as regards the part played by the States in keeping India going, from the financial side. There was actually allusion to the Butler Report this morning—to its findings and its recommendations. But, after this allusion was made, the story was completed by reference to their recommendation that the position of the States in regard to Customs might be examined. Then the story was continued, and we were told that, if a proper examination were made, it would be found that the States would have to pay at least five crores of rupees more for Defence. My Lord, in consequence of this reference, I shall first quote what the Butler Committee said as regards the responsibility of the States in regard to Defence. Then I shall venture to state my own views to the Committee on that subject. May I read paragraph 28 of the Report of the Indian States Committee?

"The Paramount Power is responsible for the Defence of both British India and the Indian States."

It should be quite unnecessary for me to read this quotation—one would have expected that it would be in everybody's mind—but I am obliged to read it.

"It must defend both these separate parts of India against foes, foreign and domestic. It owes this duty to all the Indian States alike. Some of the States contribute in different ways to the cost of this defence by the payment of tribute, by the assignment of lands, by the maintenance of Indian States Forces."

I now come to the relevant sentence of the quotation.

"But, whether or not a State makes a contribution to the cost of Defence, the Paramount Power is under a duty to protect the States."

As part of the same argument, a very generous gesture was made to the States; namely, that if they would accept this liability and that liability, if they would agree to take over the debts of India when they joined the Federation, and similarly if they would agree that the revenues derived from Income-tax should be entirely retained by British India, then our friends of British India would suggest that they should discontinue paying the 74 lakhs of rupees which they pay as tributes. I am aware that, amongst my own friends, there are men who have no quarrel with the word "tribute." I hope I shall have an occasion to go into the history of these tributes and establish to the satisfaction of the sub-Committee, which is going to sit, that the application of the term "tribute" to the payments which are in the form of 74 lakhs of rupees is really the contribution of the States to Defence. But the point I am making just now is that, if that principle is applied as it has been suggested it would be applied, you cannot merely apply it to tributes only. You will have to apply it also to the ceded territories, the purpose of which was exactly what the purpose of the payment of the so-called tributes is. I should have thought that we all knew our history so well that it would have been unnecessary for anybody to point out that there was no distinction between the ceded territories and the cash tributes, and that the distinction has resulted from an accident of history.

I cannot get away from the feeling that our work has to be finished at the latest by half-past-one, and there is much to say on the subject, My Lord. But as regards the questions which you have framed under Head 4, I would merely draw attention to questions (vi), (vii) and (viii), and give my answers briefly.

Question (vi) reads:—

"To what extent, if at all, will Federation necessitate surrender, by federating States, of rights to raise revenue

within their territories, at any rate by " indirect " taxation—(*a*) as regards existing taxes; (*b*) future taxes?"

May I take it upon myself, speaking in terms of my knowledge of the feeling of all the States of India, to say that, so far as this question is concerned, and its various parts, the reply of the States to every part of the question is " No."

Question (vii) is:—

" Under Federation, will there remain any foundation for a general claim on the part of the States to a share of " indirect " taxation imposed by the Federal Government, or to any profits accruing from Currency, Railways, Posts and Telegraphs, etc.?"

My reply to that question is that the position has got to be examined. It can only be partially examined by the sub-Committee which is going to sit. On principle, I should say that no claim can remain; but I am bound to point out that this position of the States can only result from the examination of the existing position.

Question (viii) is:—

" What principles should be applied in the case of (*a*) financial or material contributions made by some States, but by no British Indian Province, *viz.*, cash payments, State Forces and territories ceded as the price of defence; and (*b*) States which at present enjoy a measure of immunity from the incidence of the Sea Customs tariff and the Salt tax?"

My reply to that question is that, if a financial structure for Federal India is to be built up, it can only be built up when these principles are settled; and consequently it is not possible even to suggest at this stage what these principles should be. These are principles which would have to be worked out either in the sub-Committee, or perhaps even later.

My Lord, I suggested a little while ago that we had hardly considered Federal finance. My reason for saying so was that, perhaps in all—or at any rate in most—of the speeches, the question of Income-tax was dealt with and it was boldly stated that, as this tax was paid only by British India, the Federal Government should not look to the proceeds of that tax for any assistance in running itself. First of all, that is not my idea of federation; but apart from that might I say that, if Income-tax is one form of contribution which British India makes, and is distinguishable from the contributions which the whole country makes in the form of " indirect " taxation, it must not be forgotten that, corresponding to the Income-tax, there are a variety of contributions which the States have been making and are still making. I may mention that income-tax was first introduced in 1860, for five years only. It was abolish in 1865, but re-introduced in 1869 for four years. There was no Income-tax between

1873 and 1877. The act of 1886, which re-imposed the Income-tax, was in force for 32 years. Whereas the fortunes of the Income-tax have been so varying, the direct contributions (as distinguished from the indirect contributions) which the States are making to-day have been made by them since the latter half of the 18th century. Similarly in regard to Customs duties.

Time being short, I shall close by saying that the papers which you were kind enough to circulate to us—the Memoranda of the Government of India—contain much matter that is arguable; and as we have agreed that there shall be a sub-Committee, I shall be quite satisfied to discuss the points that arise out of the Memoranda in that sub-Committee.

Sardar Ujjal Singh: Lord Chancellor, The subject of Federal finance has been exhaustively dealt with in the Notes prepared by the Finance Department of the Government of India. I will only deal very briefly with the points that appear in the papers that have been circulated.

In answer to point No. (i), I agree with my friends on this side, and with the Note prepared by the Finance Department of the Government of India, that there should be a single Federal Budget; but in the charges thereon, a *pro formâ* distinction should be drawn between those which are truly Federal charges and those which ought to be borne by British Indian tax-payers.

With regard to point (ii)—Public Debt—there is no dispute that, in future, the Public Debt ought to be Federal, and that there will be no necessity for any borrowing for the purposes of "Central" subjects. With regard to past debts, there is bound to be a difference of opinion. I agree, however, with the proposals of the Finance Department of the Government of India that there may be a budgetary distinction; but the liability for past debts remains a charge on the whole of the revenues of India. In this connection it is important to bear in mind the remarks of the Finance Department on page 6, in which they say:—

> "It is suggested that it would be much simpler if the 'Central' share in the pre-Federation debt were fixed as a definite capital sum, bearing a definite rate of interest at the time of the inauguration of the new Constitution, which would be reduced each year as the capital is repaid by the 'Central' share in the Reduction of Debt provision."

With regard to point (iii), I agree with the Government of India, Finance Department's proposal that revenue and expenses of the non-Governors' Provinces should be entrusted to the Federal Government. If the North-West Frontier becomes a Governor's Province, undoubtedly then the revenues and expenditure will not be entrusted to the Federal Government, but will be directly in charge of the Provincial Government.

With regard to point (iv), primarily the Federal Government's resources would be "indirect" taxation, and the Provincial sources

would be " direct " taxation; but it is true that the existing sources of " indirect " taxation will not be sufficient to meet the requirements of the Federal Government, and that we may have either to resort to further " indirect " taxation, or to " direct " taxation—of course, with the consent of the States.

Coming to the point of Income-tax, as I have said, if Income-tax cannot be a Federal subject—cannot be a source of Federal revenue —it will certainly have to be the chief source of " Central " revenue to meet the charges of the " Central " subjects. But I am of the opinion that Income-tax rates ought to be uniform throughout India, and that, for that purpose, the Income-tax rate ought to be fixed by the " Central " Authority, and that it should continue to be collected by a " Central " agency. Over and above that rate, however, the Provinces should have the freedom to levy any surcharge up to a limit to be fixed.

Turning to point (vi), it would be to the interests of India as a whole if inland Customs were to be abolished in those States where they exist; and in no case ought inland Customs to be allowed to be levied, either by the Provinces or by the States. Where inland Customs do exist, in my opinion, some arrangement ought to be made to do away with them and to compensate those States.

Coming to point (vii), there can be no question of States claiming a share in " indirect " taxes. When we are having a Federal Government for the whole of India, in which the States are going to have their full share with the British Provinces, then " indirect " taxes will be the chief source, if not the only source, of the Federal Government's revenue. So there can be no question of the re-distribution of such revenue between the various Units. It may be that we may implement our resources by " indirect " taxes. We may levy Excise duties or Import duties on some other articles. We may raise our sources of revenue by " indirect " taxation, and there may be a surplus; but that surplus will have to be equitably distributed amongst the various Units of Federated India, and not among the States alone.

As regards point (viii), I think it is quite reasonable that State tributes ought to go. They will be an anachronism in a Federal India, but for the purposes of Federal finance no account should be taken of the maintenance of State Forces. State forces need or need not be maintained, and their cost ought not to be taken into consideration. If we take into consideration claims in regard to ceded territories, I do not know where it will land us, and I hope this question will not be pressed.

With regard to Maritime States, and border States like Kashmir, there ought to be some provision made for those States bearing their share of the burden of Federal taxation. If " indirect " taxation is going to be the only source of Federal revenue, then the Maritime States, and the border States like Kashmir, will be contributing nothing to the Federal purse; so, if they want to have that immunity which they enjoy at present, then some other source of

revenue will have to be found by which they will be contributing their quota towards the Federal revenue.

Coming to point (ix), I am strongly of the opinion that there ought to be a control over Provincial borrowing by the Federal Government. Of course, the borrowing by Provincial Governments on the credit of their own revenues, and to a limited extent, should not be so restricted as it has been in the past. I agree with the proposal that there ought to be set up a Board of Loan Commissioners, which Board is to control borrowing throughout India.

With regard to the last point, I agree that the Provincial Balances, for the present, should be kept with the Government of India, till the Reserve Bank is set up.

Sir Mirza Ismail: Lord Chancellor, I know that you are all getting impatient, and I promise you that I shall not detain the Committee for more than a few minutes.

The following are, in my opinion, some of the main principles to be kept in view in framing a scheme of Federal finance for India:—(1) Internal trade barriers should be avoided as far as possible. This is doubtless the ideal to be aimed at, but, in view of existing rights, cannot obviously be insisted upon; (2) The authority entitled to the proceeds of a tax should impose and collect it by its own agency. In other words, legislation, administration and proceeds of taxation should be vested in the same authority as far as possible; (3) As a rule, Federal taxes should be " indirect " and Provincial taxes should be " direct "; but this would be subject to the following conditions:—(*a*) " Indirect " taxation having social as well as revenue objects, for example, Excise on Alcohol and Narcotics, should belong to the Units of the Federation; (*b*) " Direct " and " indirect " taxation should be co-ordinated, so that the scheme of taxation viewed as a whole may be well balanced.

Applying these principles, the distribution of resources between the Federation and the constituent Units would be somewhat as follows:—*Federal:* Maritime Customs; Excise on articles such as Salt, Kerosene, Petrol, Matches; Currency and Mint. The constituent *Units:* Land revenue; Income-tax; Excise on Alcohol, Tobacco and Narcotics; Stamps; Forests; and other items. It may be urged that the Federal sources enumerated above may not be sufficient to meet the present scale of Federal taxation, not to speak of margin necessary for emergencies. I would, therefore, tentatively suggest the assignment to the Federation of some such impost as a Corporation tax, that is, a sur-tax without refund on profits of Companies. As joint-stock enterprise develops, this will mean an important source of Federal revenue. It may be urged that this would be a form of " direct " taxation; but a tax of the kind suggested is essentially one in respect of which uniformity is required throughout the country. If additional sources are found necessary for the administration of Federal subjects, I think that such an exception from the general principle, that Federal taxation should be " indirect," would not be open to serious objection.

This would, of course, be subject to necessary financial adjustment in the case of particular Units.

I am only giving expression to some general principles, which should be kept in view in any scheme of Federal finance for India. I do not say that they could all be adopted immediately without causing serious dislocation of existing arrangements. The question is one which has to be examined in detail by experts. There is, however, one matter in which action cannot be postponed any longer on any consideration of mere expediency. I refer to the contributions from some Indian States under the name of " tributes," an expression for which has since been substituted a less offensive term. The change of name, however, only conceals, while it does not remove, a grave injustice done to the people of the States. It is recognised on all hands that the contributions are not only burdensome, but inconsistent with the status of equality of Units which a Federation presupposes. May I read out to you a sentence or two from the Memorandum of the Government of India on this subject? They say:—

> " It has further to be remarked that the objections of States to continuance of these payments would not be based solely on the plea of their being supplementary to the ordinary scale of contributions by Federal Units. There is the equally cogent plea that these payments denote relations of a feudal character, and that the States will admit no such relationship between themselves and the Federal Government."

This being the accepted position, I am surprised that a proposal should have been put forward that the contributions should be continued until such time as the condition of Federal finances should permit of their abolition. I should be failing in my duty if I did not express my view that such a proposal would cause the people of the States serious misgiving. They would have no faith in a constitution which made the perpetration of an admitted iniquity an element of its financial system. I would, therefore, plead for the immediate abolition of the contributions. They should have disappeared long ago. Under present conditions they are an anachronism. In future conditions they will be a contradiction. The Committee will pardon me if I speak somewhat strongly upon this subject. They will remember I am sure, that Mysore suffers greatly. It pays 24½ lakhs, or more than one-third of the total head of contribution shown in the specimen Budget. It is locally regarded, and, I hope, generally recognised—to use the words of the Memorandum—as a crushing burden.

I am happy to be able to conclude this part of my speech upon a hopeful note. His Highness The Maharaja of Mysore, I know full well, would wish me to express, in the name of his people, as well as his own, their gratitude to those of my friends on the other side of the table who have given such a tangible expression of the sympathy with which they view our desire for the removal of this real and undoubted burden.

As at present advised, I am inclined to favour the States joining, on a voluntary basis, in a scheme of co-ordinated public borrowing, such as that outlined in the Memorandum. The other important questions dealt with in the Memorandum, including the classification of debt and other charges as Federal and "Central," will require, and I have no doubt will receive, detailed examination at the hands of the sub-Committee.

Chairman: The Federal Structure sub-Committee on Finance will meet at 2-30 on Monday. You will be very thankful to hear that Lord Peel has accepted the chairmanship of that sub-Committee. I just want to say this. I hope that soon the British Parliament will be engaged in discussing this question, and therefore I am very anxious that we should have on this Finance sub-Committee men who will have to explain it when it comes before Parliament. I think it is very important, therefore, that we have got Lord Peel, because, in the House of Lords, when a Bill comes on, he will have been all through it and will be in a position to explain it. With regard to the sub-Committee, I have made enquiries from all the various groups, and Their Highnesses have suggested the four that we are going to appoint for them. Sir Akbar Hydari, Sir Mirza Ismail, Colonel Haksar and Mr. Krishnama Chari. For the British Indian group, we are going to appoint Mr. Benthall, Sir Maneckjee Dadabhoy, Mr. Iyengar, Sir Sayed Sultan Ahmed and Dr. Shafa'at Ahmad Khan. Major Oliver Stanley, M.P., will be a member; and, with regard to the two financial experts that I suggested to you, I am very glad to say that we shall have on this sub-Committee two men with experience as Financial Secretaries to our Treasury—Mr. Pethick-Lawrence, who was the Financial Secretary to the Treasury in the Labour Government, and Major Elliot, who is the Financial Secretary to the Treasury in this Government. I am very thankful to say that they are members of this Committee, and that they can both come on the sub-Committee. We have thus the advantage that, when this matter does come before Parliament, we shall have in the House of Commons, to explain it, Major Oliver Stanley, Major Walter Elliot, and Mr. Pethick-Lawrence. That will be a great advantage to us. And we shall have Lord Peel in the House of Lords.

With regard to the terms of reference I do not think there is much difficulty. They are as follows:—

> "To appoint a sub-Committee to examine and report upon the general principles upon which the financial resources and obligations of India should be apportioned between the Federation, the British Indian Units jointly and severally, and the States Units."

I hope very much that the Committee will be able to finish its work in a very short time.

(The sub-Committee adjourned at 1-30 p.m.)

PROCEEDINGS OF THE THIRTY-FIRST MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON MONDAY, 5TH OCTOBER, 1931, AT 11-0 A.M.

Adjournment.

Chairman: Your Highnesses and Gentlemen, The notice convening this meeting of the Federal Structure Committee is in the following terms:—

> "The Committee will meet on Monday, 5th October, at 11 o'clock in the Drawing Room, St. James's Palace, instead of at 11-30 as previously arranged. It is understood that a proposal will be made on behalf of some members participating in the informal discussions now proceeding on Minority questions that the Federal Structure Committee should adjourn in order to make sufficient time available for these discussions."

Does anybody wish to say anything on that?

Pandit M. M. Malaviya: I propose that this Committee should meet next Friday, in order to give further time for the discussions that are going on in the Minorities Committee.

Chairman: You think that that will make sufficient time available for the discussions.

Now, Pandit Malaviya, I quite see that point. Of course, as far as we are concerned, we are here with all our information and all our staff and I do not know how many alternatives, and we are not only willing but we are ready to go on now; but I quite appreciate your difficulties, and if you desire a little delay, by all means, I think, subject to what anybody else says, you ought to have it. But I am sorry for the delay, because we are very, very anxious to push on, and I rather gather that some of you think that you would like to return to India some time this year.

It has been proposed by the Pandit Malaviya that we should not meet until Friday. Has anybody anything to say about that?

H.H. The Nawab of Bhopal: We have no objection.

Chairman: Sir Akbar?

Sir Akbar Hydari: No objection. We want to meet the wishes of the party opposite.

Chairman: I had hoped for a very long day to-day; but I do see that every opportunity ought to be taken to settle this difficult question. I am only going to say one thing. Personally I am getting a little tired of debates; I want decisions. I am quite sure you will help to get decisions; and, if a little delay will contribute to a satisfactory settlement of this question, nobody will be more pleased than I shall be.

Mr. Jinnah, have you any point on this?

Mr. Jinnah: No, Sir.

Chairman: Sir Muhammad?

Sir Muhammad Shafi: No, Sir.

Chairman: Very well—11 o'clock on Friday; but I think that must be peremptory. I think we really *must* start. I am sorry for the delay, but I must say I think you are justified under the circumstances in asking that the proceedings should be delayed for a short time.

(The Committee adjourned at 11-14 a.m.)

PROCEEDINGS OF THE THIRTY-SECOND MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON FRIDAY, THE 9TH OCTOBER, 1931, AT 11-0 A.M.

Adjournment.

Chairman: Your Highnesses and Gentlemen, Before we proceed to any discussion this morning, I would ask your permission to make a few remarks on the situation in which we find ourselves. We are all naturally disappointed that the Minorities Committee has failed up till now to reach a final agreement on the difficult problem which was referred to it; but I, at any rate, am not dismayed—I am not even downhearted. On the contrary, in my view the situation is excellent, for we are all determined that this Round Table Conference shall not fail, and that this Federal Structure Committee shall continue its work and bring it to a successful conclusion.

If we failed we should be the laughing-stock of the world. But there is something far more serious and far worse than that. What is to happen in India if we are not successful? I shudder to think.

In a few weeks' time you will be returning to your own delightful country, and your friends will meet you as you land at Bombay. They will ask you "What have you brought back for us?" Is your reply to be "Nothing?" They will ask you "What have you done;" and is your answer to be "We have done nothing at all?" My friends, you have come thousands of miles to attend this Conference. I know—for many of you have honoured me by your confidence—that many of you are here at great personal inconvenience and great professional loss. Have you made all these sacrifices merely to persist in disagreement? Believe me, there is not an Englishman here who is not longing to help you and to see India a nation, with all its classes and all its communities dwelling together in unity, and with their leaders (many of whom I see before me) joining together to ensure the happiness of 350 million men and women. If any member of this Committee had only himself to consider, he would be at liberty to walk out of this room and go for a well-earned—and may I add in respect of many of you—a much needed holiday. But we are not at liberty to consider ourselves only. Upon our remaining here and coming to

a decision rests in a great measure the well-being of one-fifth of the human race.

Again I say we want to help you. You know I do. But you must first learn to help yourselves. One thing we all have to cultivate, both now and in any future Federal Government—and that is the will and the desire to agree. Without that there can be no present and no future success. Forgive me for telling you: you have captured the heights; you are within sight of the promised land for which you and your fathers have waited so long and so patiently. When success is in your grasp, are you going to let it slip? Are you going to turn your back on that promised land, and retreat to the desert of disagreement and the chaos of non-co-operation? How can you walk together unless you be agreed? Do not be discouraged. Let us make another effort. It is possible for you to see with your own eyes the desire of India accomplished. Do not imagine that your children's children alone will have that satisfaction. It is for you to decide whether you shall see it yourselves.

With regard to minorities, you will expect me to say something. I have purposely stood aside, because my work has been here, and not on the Minorities Committee; but it may help you to have the views of a fresh mind upon the subject. I realised from the beginning that it is no doubt the most difficult of all the questions that we have to decide. You will forgive me for saying this—that as I realised that at the beginning, I realise this now, that every member has honestly done his best to come to an agreement upon the subject. There is not one of you who does not want an agreement, but you are quite rightly (and I do not blame you) advancing your own points of view. In my view, the immediate question with regard to the minorities is not what the settlement shall be, but the method by which there shall be a settlement. I would ask you to turn your attention to that for the next few days. You have tried your best to get a settlement. I am not blaming you, but let us see now what is the best way of getting a settlement.

With those few words I want to offer you a suggestion with regard to future procedure, and perhaps you will allow me to adopt tones not quite so serious as those in which I have been speaking to you. I do not know what you think, but I should think that you must all be tired of memoranda, minorities and midnight meetings. I should think that you would be glad to have a rest for a day or two, or for several days for that matter.

I was very sorry that, when you came over here, a General Election should have delayed matters. I was sorry for two reasons. First, because I think that the coming on of a General Election did to some extent distract attention from our work. When you came over here on the last occasion in November and December, you occupied the centre of the stage, and a great work was done in educating public opinion. This time, unfortunately, the General Election has rather monopolised public attention; but as you know

it is an ill wind that blows nobody good. I thought to myself last night: "I am not sorry that they are over here during a General Election, because they will soon be having a General Election themselves in India, and they will know a little about it." For example, some of you will know exactly what to call each other for three weeks. And, if one distinguished member will allow me to say so, I am looking forward with great interest to receiving a copy of the "Hindu" with the first leading article on the state of parties at the first Indian General Election. I hope it is not all a waste of time, therefore.

Now, I am going to suggest this. The subjects we are going to discuss you cannot discuss as tired men, and I do not think it is much use going on very far, if at all to-day. But I have a piece of good news for you. Thanks to Lord Peel and the other members of the Finance sub-Committee, they have just signed what is in effect a unanimous Report. Just when things look pretty bad, it is a great thing to think that there is something which is all right.

I think the best thing to do, subject to what you say—because it is a matter for you—is that we should take that Report on Tuesday. I will get it circulated to-morrow, and if you take my advice you will not look at it on Sunday. We can discuss it on Tuesday, and we have the advantage here of a very distinguished expert sitting next to Sir Muhammad Shafi (Sir Purshotamdas Thakurdas), who is just in time to help us with some deliberations on that Report; and that Report is a very big step forward.

The next thing I would suggest is this. I do not know how long that will take, because the matter is a difficult one and I should like to hear opinion on it, but I am very anxious to get this next—I am very anxious to get the Federal Court settled, because I think that, if we get that on to good sound lines, it will be a very great help in the determination of many questions which I do not want to go into at present. I will circulate, if you will allow me to do so, on Monday, a document about a Federal Court, so that when we have finished the Finance question we will at once get on to the question of the Federal Court, and when we have finished the Federal Court we will get on to all those questions—and there are a good many of them—in the document I have circulated to you, which are really not affected to any extent, if at all, by the communal question.

Now, in that sort of way we shall be able to make very considerable progress, and during that time you will be discussing other matters; but, if I may again advise you, the sort of thing I would advise you with regard to minorities is to concentrate for a while, not on what the settlement is to be, but on what way the settlement is to be obtained. I do not want to discuss that now—I know perfectly well the suggestions which have been put forward, and so on—and I think in that sort of way we can continue our deliberations.

The General Election will not make any difference. We will sit here, and after this short rest and short adjournment go on in

this way, if that commends itself to your view. What do you think of that, Sir Muhammad Shafi?

Sir Muhammad Shafi: The suggestions made by you, Lord Chancellor, is acceptable so far as we are concerned.

Chairman: Thank you very much. Now, Mr. Gandhi, what sort of view do you take of this?

Mr. Gandhi: Well, Lord Chancellor, I know that I have been somewhat instrumental in postponing the deliberations of this Committee; and, being in that unfortunate position, I now feel some diffidence when I say that we cannot afford to waste a single minute. We have come, as you very properly say, all these several thousand miles in order to work, and not in order to seek recreation or holiday; so I would certainly say that, if it is at all possible, we should go through the work of the Federal Structure Committee without waiting for a single minute. If at the back of our minds, individually or collectively, the thought is lurking that, even though we might be sitting over the deliberations of the Federal Structure Committee, we would be really marking time until the minorities question is settled—if that really is the feeling which we would not or we dare not express—then I would suggest that we express that feeling and come to a decision.

I myself endeavoured to express my own deliberate opinion yesterday that there is not that absolutely vital connection with the work of this Committee. The minorities question is undoubtedly a very important, if not the most important, question. It has always occupied in my own mind its natural place, but it has never overshadowed the other equally important consideration. And, after having laboured at this question for seven days, I saw more clearly than I had seen before that probably the minorities question would not be satisfactorily settled unless the great fundamental questions were settled. That being my conviction, I should like the proceedings of this Committee to be clothed with reality, and that, on several heads which you, with your amazing industry, have been piling upon us from day to day and week to week, we should come to summary decisions instead of making speeches. Therefore, if I may give my opinion without any mental reservation whatsoever, I would suggest that, if we really feel, as I feel, that we should consider and face the questions that are before this Committee on their merits, irrespective of what may happen in connection with the minorities question, then I say that we should sacrifice every holiday; and I know that we shall get the strength to go through this work without coming to grief if we mean serious business.

But I repeat, as I conclude, that if at the back of our minds the impression is that we should continue to work and yet not work, I think that it would not be just to India, it would not be just to ourselves, and it would not be just to the British Ministers either. Therefore, I feel most strongly that we do not need any holiday. Every minute that we have is really pledged to this work and no other.

Sir Tej Bahadur Sapru: My Lord Chancellor, I really do not think there is any difference of opinion between what you said just now and what Mahatma Gandhi has said.

You also said just now that you would like to take up the question of the Federal Court. I believe—and it is my honest conviction—that the Federal Court is going to play a very great part in the constitution of India, especially in relation to the minorities themselves. As it has happened elsewhere, so it will happen in India, that a great deal of protection to minorities will come from the jurisdiction which you may confer upon the Federal Court. For instance, the question of the interpretation of the constitution, and the question of the enforcement of fundamental rights on which we are all very keen, will be within the province of the Federal Court. Therefore, if we take up the question of the Federal Court on Tuesday and devote a few days to it—possibly two days to it—I do not think we shall be wasting our time at all.

I did not understand Your Lordship to say or suggest that you intended to side-track the work of the Federal Structure Committee so far as it relates to those heads which have not yet been touched.

Chairman: Oh, no.

Sir Tej Bahadur Sapru: We are going to progress up to them stage by stage; and I should be very sorry indeed, if on account of the failure of our work on the Minorities Committee, we in any way weakened our position and allowed time merely to pass by deceiving ourselves that we were doing work while we were not doing any real work. If you will permit me to say one thing, I will say it; and I will speak with all the emphasis and all the candour of which I am capable. Not only has it been disappointing to you, the British members of the Committee, but it has been disappointing to us all that our efforts should not have been crowned with success. I have not the least doubt that every one of us realised the importance of the question of minorities; and, frankly, I think that it is a most vital condition of our success that we should come to a satisfactory solution of the minority problem, rather than allow the situation to deteriorate from day to day. I also realise that the reactions of our failure on that question in India will be very serious—far more serious than we are prepared to own or than we are prepared to realise.

That question has got to be settled, must be settled, and will be settled some day or somehow by some one. It may be by ourselves; it may be by any other method. As Your Lordship said just now, the real question is as to the method of settlement, and we have got to apply ourselves to it undaunted by the failure that has attended us so far. Although unkindly critics may say that we have betrayed and incapacitated a settlement of an important question like this, I will say this in our self-defence, that we are not the only people who have met and failed to arrive at a settlement on some important question. I will appeal to Your Lordship's experience of international conferences. Occasions have arisen in recent European history when everything seemed to be on

the breaking point; and when parties had discussed things again and yet again, they met and brought about a settlement. If we are serious about our business, and if there is any earnestness about it, I think that we owe it to ourselves, we owe it to our country, and we owe it to yourselves, that we should again seriously tackle this problem; and, if we can present you with an agreed settlement on this question, I do not think that there is anything better to hope for. Supposing that we are unable to come to an agreed settlement on the various questions that divide us, we should at any rate be able to arrive at a settlement as to the method by which we have got to approach this question.

I will not discuss the question of the method at all, as I do not wish to prejudice any ideas upon that particular question. Of one thing I am quite clear. Every one of us realises, and ought to realise, that the failure of this Conference means a disaster to us in India. A state of things which I dare not contemplate may supervene the failure of this Conference, and probably many of us must revise, under the necessity of circumstances, our pre-conceived ideas. I believe that every one of us holds his conviction very dearly; but, when the question of settlement arises, I think that we have to revise many ideas on the question. I do still hope that, notwithstanding the disappointment that has arisen on account of the failure of our work there, we shall be wise before it is too late. It does not matter to me whether those who are here are here in a representative capacity or in any other capacity. We are capable of arriving at a settlement. Surely the men who have assembled here, if I may very modestly and humbly say it, represent some of the best elements in my country; and it will be a serious reproach to us if, at the end, we have got nothing to say but that we have tried again and we have failed. In that spirit I am prepared to support the suggestion that our work should go on uninterruptedly. What particular head we shall take first, and what particular head we shall take next, is a matter which I should leave absolutely to your discretion. So long as our work takes us one stage further towards the completion of the work, I should be satisfied. I have nothing more to say.

Mr. Zafrullah Khan: Lord Chancellor, Sir Muhammad Shafi, on behalf of the Muslim Delegation, has already expressed our willingness to co-operate in the work of this Committee to the extent to which you have outlined the immediate feature stages of the work of this Committee. Mr. Gandhi has made an appeal that, when we express our views with regard to the programme of the work of this Committee, we should have no mental reservations. It is only in order to avoid any misunderstanding at any subsequent stage that I, on behalf of the Muslim Delegation, desire to supplement what Sir Muhammad Shafi has said.

We consider that, so far as some of the very outstanding questions are concerned which have to be dealt with by this Committee, it would be impossible to enter upon any discussion of them so long as the question of the Safeguards for the minorities is still pending,

and the principles of that question have not been settled. It is not in any spirit of resentment or irritation or obstruction that we wish to make that submission. It is because we feel that, under those circumstances, we would not be able to give any assistance whatsoever towards the solution of these questions that we take up that position. All that we would be able to do in that case, if you called upon us, Lord Chancellor, to express our views with regard to those questions, would be to say something like this: "If *this* is secured, and *this* is guaranteed, and *this* is not interfered with, and *that* is not moved, and *that* is brought a little nearer, then we think *this*." We should have to say "If any of *these* factors is changed, then we think otherwise; and if there is any change in *that* direction, then we think in another fashion." I leave it to you to appreciate what kind of help we would be rendering to you in that case. I believe we would only be adding to the difficulties and perplexities of the question rather than contributing towards its solution.

That being so, I must make it perfectly clear that our willingness to continue to participate in the work of this Committee with regard to the two stages at present outlined by you, Lord Chancellor, is based on the desire that, while we are still considering the question of the Safeguards for minorities, we should not lose, as Mr. Gandhi has said, a single minute of the time.

Nobody can say that the question of Federal finance or that the question of the Federal Court is a whit less important than any of the other questions which this Committee has to consider. We feel we can go on with the discussion of those questions, inasmuch as no aspect of those questions does in any way affect the communal question; and if, by the time we have finished with the discussion of those questions, we can discover any other topic which is to the same extent entirely free from communal considerations, we would be willing to go on with the consideration of any such questions.

It must be realised, however, that the moment we were faced with a question which, directly or indirectly, involves or affects any communal consideration or any rights of or Safeguards for the minorities, we would not be able to discuss that question or make any contribution towards its solution until at least the principles of the Safeguards for minorities and the safeguarding of various interests have been settled to the satisfaction of the different interests and, so far as we are concerned, to the satisfaction of our Delegation.

With regard to this I might draw the attention of this Committee to what was said yesterday by Sir Muhammad Shafi in the Minorities Committee with reference to a remark that fell from Mr. Gandhi that the decision of the minorities question may be left for settlement by a judicial commission. With reference to this remark, Sir Muhammad Shafi observed that, in making this remark, Mr. Gandhi overlooked one vital factor in the question, and that was that no constitution could be framed—let alone that the constitution as framed should contain a provision as suggested by

Mr. Gandhi—till this question was settled. Let me also draw the attention of the Committee to one or two observations which the Prime Minister made in the Minorities Committee on this question:

> "There is another point I want to put to you. Will any of you tell me, quite honestly, that the continued existence of this problem unsolved can be overlooked either by yourselves if you were drafting your own constitution or by His Majesty's Government if it were trying to draft a constitution for you? I bring you up against facts. You know perfectly well—especially every one of you who has been in public life and has faced the practical problems of public life—you know perfectly well that whilst this problem is unsolved it puts an enormous obstacle in the way of constitution making for India, not simply because that constitution must be drafted by His Majesty's Government under present circumstances, but supposing I said to you on behalf of the Government, and supposing Parliament agreed, 'Take the business over to yourselves,' why, you know perfectly well that you could not go six inches without coming to a deadlock."

That is perfectly true.

May I wind up by submitting that, at one time, the importance of the solution of this minorities problem was considered so vital by Mr. Gandhi himself that, at a meeting at the Viceregal Lodge, towards the end of March, Mr. Gandhi expresssed the opinion that this was not only a very vital question, but that, without its solution, it would be impossible for him to take any part in this Conference. It is only a spirit not to obstruct in any way the work of this Committee, so far as it is possible to do so without giving opinions on matters which would be of no value whatsoever, that we could proceed on those lines; and, so far as those questions are not touched, we shall give all the co-operation and all the assistance that we can in your work.

I thought it was best to make it clear to what extent we can proceed with the work.

(The Committee adjourned at 11-45 a.m.)

PROCEEDINGS OF THE THIRTY-THIRD MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 13TH OCTOBER, 1931, AT 11-0 A.M.

HEAD 4.

Distribution of the Financial Resources between the Federation and its Units.

DISCUSSION ON THE REPORT OF THE FEDERAL FINANCE SUB-COMMITTEE.*

Chairman: Your Highnesses and Gentlemen, The business which is before us to-day is the discussion of the Report of the

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* The Report of the Federal Finance sub-Committee is printed as an Appendix to the Third Report of the Federal Structure Committee.

Federal Finance sub-Committee; and, before we begin this discussion, I am sure you will agree with me that we ought to tender our thanks and our congratulations to Lord Peel and the other members of the sub-Committee for producing for us, at rather short notice, such a very clear and lucid Report. I think that they have greatly helped on the business which we have in hand.

Lord Peel: Lord Sankey, I formally present the Report of the Finance sub-Committee to the Federal Structure Committee. At this stage there are not many observations that I wish to make, because I hope I may assume that most of the members of the Federal Structure Committee have read the Report, and I will proceed on that basis.

There are just four points on which I should like to comment. The first is the paragraph at the end about the Expert Committee or Committees, because it may be thought that a good many subjects for investigation have been left over for this Expert Committee. That must necessarily be so, because, even in the fortnight during which we were sitting, we had really to hustle over these very large subjects at a very great rate, and there are a very large number also of detailed matters which would have taken us months and months to examine, and, indeed, which we were really not in a position to examine, because we had not got all the necessary material before us. I should like to explain what the sub-Committee meant by an Expert Committee. When they said an Expert Committee they meant an *expert* committee; that is to say, our advice was that it should not be what is called a representative committee—representative of different interests, and so on—but that it should consist of people who were expert in these particular subjects, working under the general directions that we have proposed to give them, but dealing in the most cold and impartial manner possible with the facts and figures which they have to examine.

The second point on which I wish to comment is the question of the taking over of the debt by the Federal Government. Of course, from the point of view of the outside creditor and the general credit of India, this is of very great importance; and we wanted the new Federal Government to succeed to the old with the least possible jolt, as it were, to the credit of India. Now, the question of the fairness of its being taken over by the Federal Government is examined, of course, in the Report; and we comment on and criticise, if we may do so, the method that the Government of India has adopted of merely trying to size up or weigh up some of the assets and balance them against the whole of the debt. It is quite obvious that that method is really an unfair method and does not give sufficient credit for the large assets that are held in India against the debt. It is a very remarkable thing, but I think, when the matter is properly gone into, it will probably be found that India actually holds assets which come very nearly to the amount of the debt, if not entirely—if they do not meet the whole of the debt. That is a most remarkable situation; it is quite

unparalleled, I believe, in any other country in the world. And perhaps I may be allowed respectfully to congratulate the Princes and the States for coming into so splendid an inheritance. It may be found, of course—and we allow that loop-hole—that there are certain portions of the debt (possibly small matters, like a share of pre-Federation pensions, and the question of some of these "Central" Departments), which ought to fall on "Central" as apart from Federal revenues. but the point on which I want to lay stress, of course, is that this is a purely domestic matter. It is a matter between the Federation and, as it were, "Central" revenues; and, while we suggest that any balance over, either of interest or sinking fund, should fall in the first instance upon the Income-tax or other purely "Central" taxes, yet, from the point of view of the outside world, the debt is taken over by the Federal Government. This, as I say, within the Federal Budget, is a purely domestic matter to be adjusted between the Federation and the Provinces. That seems to me to be a matter of very great importance indeed.

The third point on which I should make an observation is the question of the division of the taxes and of the sources of taxation between the Federal Government and the Provinces and States. I think I may say, without disrespect to the sub-Committee, that at first they showed a tendency to take all the fat, all the good joints for the Provinces and the States, and leave rather a meagre fare for the Federal Government. I think perhaps this was natural, because we had representatives, of course, of the Provinces and representatives of the States, but we had nobody to represent the Federal Government, the Federal Government, of course, not being in existence. Few are the champions of unborn children; and that doctrine was certainly illustrated in the sub-Committee. But I think, after further consideration, the sub-Committee did very much better than might otherwise have been done for the Federal Government; and the Federal Government, though it started rather leanly, is much better endowed than perhaps might have been expected. I lay great stress upon this point because, for three main reasons, you must give a good deal of financial elbow-room to the Federal Government. The first is that, though it may have a restricted number of powers, yet within those powers and in the exercise of those powers it ought to be paramount. Secondly, it has the great duty cast upon it of defence, with all the emergencies that may arise out of that consideration. And, thirdly, it is, as you see, really responsible for the general credit of India; and the proposals we make for loans, especially external loans, being raised through the Federal Government, make it of importance that you should not restrict too closely the resources of the Federal Government. Otherwise the creditor perhaps will examine the thing rather closely and may be tempted to ask a higher rate for his loans. Summarising, therefore, our attitude very generally besides the Customs, which of course must necessarily fall to the Federal Government, we have made proposals about Income-tax, about

Corporation tax, and another point on which I lay some stress, that is to say the possibility of not too difficult amendment of the constitution in respect of some of these financial provisions. We must not tie it up too closely. That is only a suggestion, because it was rather outside our province. Then, in paragraph 16, we discuss the question of contributions from the Provinces in order to start the Federation on a little stronger financial basis, with the suggestion that these should die away within a certain limited number of years. We also want to add a little flexibility to the finances by suggesting the possibility of grants from the Federal Government to the Constituent Units, and conversely we suggest that there should be a possibility of grants by the Constituent Units to the Federal Government. I am a little sceptical as to how far that will be a prolific source of revenue in practice, but it is one which might fairly be put forward. Then, of course, there are the emergency powers which must exist in the constitution should any serious difficulty arise. Just two points upon that. We discussed at some length the question of the division of these taxes. Sometimes they fell on one side of the line and sometimes on the other. I cannot say we were always in agreement as to which side of the line they should fall. If I may express rather my individual view, I should have preferred that the commercial items should go to the Federal Government; and, as regards the Excises, you will notice that it is open to doubt whether "Narcotics" for this purpose should include Tobacco, and I myself would have hoped that the Tobacco Excise should not be included among "Narcotics." I think the result of all this is that the Federal Government is far better endowed than it was when it started.

The last point on which I wish to say a word is this. We were always met with the great difficulty that we had not a clean slate to start from, and we had to adapt ourselves and our views to the existing situation in a large degree. That, of course, was quite evident in the case of the relation of the Federal Government to the States. We have tried to get the largest degree of free trade we could within the conditions of India, subject to the existing situation, and we have suggested that transit dues should be forbidden, while we know that the Provinces do not charge internal Customs. The States, however, do; and the States took up a strong attitude about the impossibility of doing away with their internal Customs, although it is obvious that they might to some extent affect the Customs levied by the Federal Government. But that is one of those things that cannot be altered, and I think the sub-Committee were quite clear, after examining the situation, that, to ask the States to wipe out at one swoop their internal resources of taxation, would simply paralyse the Budgets of the States and make it quite impossible for them to carry on. In that connection you will see how we have dealt with the question of the State contributions. On the one hand, we should be inclined to say that they are connected with a historical situation that no longer exists, and should

not be carried over to the new Federation. They are very unequal in their incidence, and cannot be said to be a fair contribution from the States to the Federal Government. Well, of course, it will be very nice to wipe out the whole thing by one stroke of the pen; but it is difficult to lose revenue in that way, and we have made various suggestions about a percentage reduction in the case of the more heavily charged States, and further proposals for the future abolition of these charges.

We have tried to observe, throughout our operations, three principles. First, we have had to start as practical men from the existing state of things. We could not construct an ideal state to start with. Secondly, we recognise all through that, though we are a finance committee, finance must be the servant and not the master of our operations. Thirdly, we have done our best to harmonise financial operations with the main lines of constitutional policy which are being laid down by the Federal Structure Committee. Those are our principles; and that is all I have to say at this point.

There is one other matter, however, which I should like to interpolate. The sub-Committee laid one duty on me which I have not discharged, and that was to express in the Report our thanks to our Secretaries, who worked so very hard. I was told that I could not do that because it was unprecedented, and so I will take the opportunity of saying it now and thus escape the precedent difficulty.

Sir Purshotamdas Thakurdas: The Report of the sub-Committee is unanimous, and to that extent I am sure that it is particularly welcome to this Committee. I should like, if I may, to make a few general remarks before I go on to deal with some of the details. The Report deals with a difficult subject which requires careful elucidation of important underlying principles. Happily in regard to this question there are no special vested interests, liable to challenge, which have to be nursed. There is no conflict with Great Britain, and there are no sectional prejudices either. It, however, requires constructive ability and outlook of a high order to foresee the difficulties which must develop, and which will have to be faced before long, if the Federation of British India and Indian India—both sons of the soil and both interested equally in the Motherland and her progress and credit at home and abroad—is to march onwards to the goal of a powerful unit in the British Commonwealth of Nations. The sub-Committee, therefore, may rightly be congratulated on their broad vision and general spirit of avoiding encroachment on the views of either side in framing their Report.

Of the various important recommendations made by the sub-Committee, the one which is most outstanding is their suggestion that the field of enquiry should be divided into two parts, and that two Expert Committees should be appointed to deal with those two parts. The questions to be referred to them are of a most com-

plicated and even, in some cases, delicate nature. It is to be hoped that this Committee will accept the Report with a strong recommendation that the personnel of the two Expert Committees should be such as will inspire full confidence, and that the Reports of those Committees will be accepted as giving a good start to the machine of Federal finance. These men must be experts, as far as possible, in the various questions involved—men who will, without fear or favour, decide the questions unbiassed and in as practical a spirit as possible.

I should like to make a few observations about some of the important details which require notice here. In paragraph 6 there is a sentence which requires special notice. It is the last sentence of the first sub-paragraph. The Report says:—

> "No classification of pre-Federation debt as 'Federal' and 'Central' for constitutional purposes could be contemplated of such a kind as to affect the position of the lender."

This is in marked contrast with what is said on page 5 of the Memorandum of the Finance Department of the Government of India, where it is observed in paragraph 11:—

> "It would therefore be correct, if any such distinction were made, to regard the main portion of the Sterling Debt as a Railway liability to be assumed direct by the Federal Government. In any case it will make for simplicity if Central's liability to Federal is recognised as a wholly rupee liability."

I have no doubt that the observation in the Memorandum of the Government of India is incorrect; and I would venture to say it was uncalled for and, unless challenged, may lead to complications.

Whilst on this subject of pre-Federation debt, I must observe in passing that the acceptance of the Report of the sub-Committee does not prejudice the broader question of an investigation of the liability of India for the whole of what is called the Public Debt of India. That is a separate issue and has to be considered on its own merits. There are those who hold strong views about this matter, and they must not be considered to be affected by the acceptance of this Report. In fact, I would suggest the addition of the words "taking this term in its wider sense" to the last line but five on page 5 of the Report. That, I think, will at least bring out the difference, which I think is very pertinent to the two considerations, namely, the question of debt in this Report and the broader question to which I have just referred.

In paragraph 13 of the Report, Transit duties, whether in the Provinces or in the federating States, are forbidden, and similarly the Provinces are debarred from levying internal Customs. This should be welcome to all. Transit duties in the Provinces and federating States would involve the negation of federation. As regards internal Customs, it can only be hoped that the States before long will come into line with the British Indian Provinces.

Regarding Grants to Constituent Units, dealt with in paragraph 14 of the Report, I suggest, Sir, that of the various considerations indicated in the first sub-paragraph there should also be included, for purposes of consideration by the experts, the question of contributions to be made to taxation by the British Indian Provinces. I daresay that that is perhaps included in the words " or to some other criterion," which is in the first sub-paragraph of paragraph 14.

Then, with regard to Income-tax, paragraph 15, I would like to refer to the last sentence on page 8, which reads:

> " The distribution of the proceeds of Income-tax among the Provinces (even though there may initially be countervailing Contributions to the Federal Government, as proposed in the next paragraph) may also form a very convenient means of alleviating the burden of two or three of the Provinces which, under the present system, are universally admitted to be poorer than the others."

I wonder, Sir, whether this would be desirable. If it is suggested at any stage that some Provinces should be specifically helped by the Federation, I suggest that it would be better to make a direct contribution for that purpose rather than to mix that up with the question of contributions to the Provinces out of the Income-tax which we may recover from the Provinces. I always have felt that it is easier and simpler, in the long run, to make contributions on merits rather than to prejudice the claim of any Province or any Unit to its just share in the general pool.

Lord Peel: It would be partly a matter of book-keeping, would it not?

Sir Purshotamdas Thakurdas: Yes, except that it would be somewhat difficult to beat down a Province in the proportion of contributions to which it may be entitled out of the general pool.

Sir Akbar Hydari: Do you mean by the " general pool " the Federal pool?

Sir Purshotamdas Thakurdas: No, I am particularly referring to the pool with regard to the Income-tax—Income-tax which is collected by the " Central " Authority and is then distributed, after the expenses are deducted, to the Provinces. That is what I think is indicated in the sentence which I have just read.

Sir Maneckjee Dadabhoy: You are referring to the British Indian pool.

Sir Purshotamdas Thakurdas: Yes, that is it.

Under paragraph 20, " Maritime States and Kashmir," I have just one suggestion to make, which may be looked upon as verbal, but which I think is rather necessary. I will read the third sentence of the paragraph:

> " One principle which we would lay down is that, in all cases, the imjort tariff at the States' Ports should be not less than that at Ports in the rest of India."

I would suggest that it should read:—

"..... should be the same as at Ports in the rest of India."

I may be told that this was the intention of the sub-Committee; but I wish to draw attention to the fact that there should be no clash with what is laid down and agreed upon in the International Convention on the Régime of Maritime Ports, which requires that the import duty at each port of a country should be the same. I daresay that this is more of technical than of practical value; but I felt that at this juncture I might just draw attention to this important commitment, and a very useful one too.

Regarding Borrowing Powers, which are dealt with under paragraph 22, the sub-Committee is unanimous that there should be no power to Units to borrow abroad, and I expect that that will meet with the approval of all of us. Normally, the Federal Government should be able to borrow cheaper than separate Units; but it is perhaps necessary to let Units have the right to borrow independently if they wish to, or indeed if they can. Personally, I think, for the first few years—perhaps, say, ten, at least—a more strict control would be advisable. The Federal Loans Board, even though technically advisory, and having no direct power over the various federating Units, should be powerful, by its influence and the confidence it will command in the public eye, to exercise a salutary check.

I feel that, as to paragraph 25, where some reference is made to the Commercial Departments, nothing that is said here should prejudice us from taking up the attitude which some of us desire to take up in connection with these Departments, which will, I take it, come up more properly at a later stage. I have no more remarks to make.

Sir Provash Chunder Mitter: Lord Chancellor, Let me begin by congratulating the sub-Committee, which has done most useful work. If I have any suggestions to make at a short notice, I bring forth those suggestions, because the question is a very difficult one, and on a proper decision of the question depends a good deal. Lord Peel has explained to us what, in his opinion, should be the constitution and personnel of the Expert Committee; in other words, that it should be really an *expert* committee. My esteemed friend, Sir Purshotamdas Thakurdas, who is perhaps himself an expert, has suggested that there might be a representative element in it. If I am wrong in saying that, I shall be corrected.

Sir Purshotamdas Thakurdas: I did not say that, Sir Provash.

Sir Provash Chunder Mitter: You said that it should be an expert committee, but you also said that. I would like to be corrected. Will you please read out what you said? You said it should inspire confidence.

Sir Purshotamdas Thakurdas: I will read out that particular part which I have on paper. It is to be hoped that this Committee

will accept the Report with a strong recommendation that the personnel of the Expert Committee should be such as would inspire full confidence, and that the Report of the Committee should be accepted as giving a good start to the machine of Federal finance. They must be experts in the various questions involved who would, without fear or favour, decide the question unbiassed, and in as practical a spirit as possible.

Sir Provash Chunder Mitter: Thank you.

Chairman: They are clearly not representative, then.

Sir Purshotamdas Thakurdas: That is so. I did not say a word about it.

Sir Provash Chunder Mitter: That word " confidence " led me astray. However, I am unhesitatingly of opinion that the Committee should really be an *expert* committee. At the same time, I would like this Committee to consider this, that the representatives of the people will have to deal with the matter later on. The Expert Committee may make very good suggestions, but the elected representatives of the people will have to work the constitution. Therefore I merely throw out this suggestion: let the Committee be an Expert Committee, but let the Report of the Committee be placed before a representative committee. Ultimately His Majesty's Government will decide. If the representatives make suggestions which are unacceptable, then no doubt the Report of the Expert Committee and the suggestions of the representatives will be considered.

Sir Tej Bahadur Sapru: I should like to know what Sir Provash means by saying that His Majesty's Government will ultimately decide.

Sir Provash Chunder Mitter: I am going to develop that. I feel that, at the present time, we have not got the necessary data. An Expert Committee will be given certain directions; an Expert Committee will be in a good position to ascertain those data, and to make their suggestions from the point of view of the possibilities of rupees, annas, pies, the system of taxation, and so on. Now, that is pre-eminently the duty of an Expert Committee; and, when the Report of the Expert Committee will be before the representatives of the public, they may say: " Oh, this is wrong and that is wrong." As I look upon these proceedings, we are advising—we are telling His Majesty's Government what India wants; but we are not authorising plenary powers to draft the constitution of India. I have not the slightest doubt that His Majesty's Government will give every weight to the opinions expressed by this Committee; but the ultimate drafting will be with His Majesty's Government, and, in cases where there is a difference of opinion, His Majesty's Government will have to decide. If, however, we can produce something absolutely unanimous, I have not the slightest doubt that, unless there are very strong reasons to the contrary, His Majesty's Government will defer to such unanimous opinion. But this is not a question of politics; it is a question of finance.

As I have already stated, what I have put forward is a mere suggestion. If a better suggestion can be put forward, I am willing to express my opinion on that. But I feel that the Report of the Expert Committee should not be made the starting point of criticism. You will take away the chances of criticism if you allow the representative Committee to have their say on the matter. But if Sir Tej Bahadur Sapru can make a better suggestion, I shall be very pleased to hear it.

Sir Tej Bahadur Sapru: I should like to know the stage at which this Expert Committee would come into existence. Is it intended that the Expert Committee will function first, and when its Report has been submitted, the constitution will come into force; or is it suggested that you will follow the South African model, and appoint a finance commission or something like that? If it is to come at an earlier stage, then ultimately it will be His Majesty's Government who will incorporate it in the Constitution. If it is to come at the later stage, it will be the Federal Government which will have to enforce the recommendations of that Expert Committee. I may remind you that in South Africa it was the Dominion Government which had to enforce the recommendations of the Finance Commission.

Lord Peel: I will answer that as far as I can, but I cannot, of course, answer it as Chairman of the sub-Committee. I can only speculate on the answer as a member of the Conference, so that I do not know that my answer is worth much. It very largely depends on time. I do not know when this Federal Government is going to be set up; but I imagine that, if the Expert Committee is set up soon, as I suppose it will be, its Report, whatever it may be, will be examined and the necessary results of that Report can be embodied in the Constitutional Act.

Mr. Iyengar: May I say, as one of those who took part in the work of the sub-Committee, what I thought was to be the function of the Expert Committee?

Lord Peel: I am not saying anything about its functions, of course.

Mr. Iyengar: No. I understood that, for the purposes of drafting and making the constitution, our recommendations were perfectly sufficient; and that, having drafted the constitution on that footing, the authorities to be set up under that constitution would act on the advice of the Expert Committee, which was set up to examine these matters, and would give effect to the recommendations of that Committee after considering them themselves. That, at any rate, was the idea on which we agreed that this matter should go before the Expert Committee—or at least I acted on that belief throughout.

Sir Tej Bahadur Sapru: That is more or less my meaning also, but in that case I would venture to point out that there is one deficiency in the recommendations. If the intention is to set up an Expert Committee which will make recommendations to the

Federal authorities, and that that Federal authority will give effect to those recommendations, then you will have to provide for the interim period for which, in fact, you have not in this Report made any provision. There was a provision of that sort in the South African Constitution, where a similar procedure was adopted. You will have to come to some arbitrary arrangement for the interim period.

Mr. Iyengar: That is a matter for this Committee.

Sir Tej Bahadur Sapru: But I should have expected a recommendation of this character.

Sir Pravash Chunder Mitter: I am grateful that Sir Tej Bahadur Sapru's questions have cleared the matter up a little. When I read this Report, I thought the intention was to appoint the Expert Committee at once. If the constitution is so framed that the future Federal Government will have a certain amount of elasticity in dealing with this matter, that is a point of substance. If, on the other hand, it is found that the constitution is such that that degree of elasticity will not be present, then I submit it is desirable that the representatives should have a say.

May I respectfully point out, moreover, that, as distinct from other Federations, for example the South African Federation, there is a new element in our Indian Federation, namely, that the Indian States are coming in; and we are proceeding on the basis that the system and incidence of taxation will perhaps be different from that which it has been in the past. In the past the Central Government had, for example, the Income-tax; but, in the future, that should not be the case with regard to the Federal Government. Their Highnesses have told us that they are not willing to have that tax imposed on the subjects of their States, and therefore it may be necessary to consult the representatives before you draw up the constitution. It may be possible, however, to give the necessary elasticity; and then I have not the slightest objection to the future Federal Government dealing with the matter. But my point is that, at some stage or other, the people's representatives should be given an opportunity to express their opinion. There is, therefore, really no difference of opinion on the substance.

Chairman: Will you please look at paragraph 4? Mr. Gandhi has kindly pointed this out to me. It is on the first page, and is headed "Conditions of the Problem." Perhaps you will read out the second sentence, which begins with the words "Any theoretical scheme." Do you mind reading that out?

Sir Provash Chunder Mitter: It is as follows:—

> "Any theoretical scheme for the division of resources and obligations should, before being embodied in the constitution, be put to the test of a careful examination of its probable results by some body which is fully equipped for the task."

Chairman: Do you agree with that or disagree with it?

Sir Provash Chunder Mitter: I agree.

Sir Tej Bahadur Sapru: Without making any speech, may I just be permitted to refer to section 118 of the South Africa Act of 1909, on which, more or less, was modelled clause 72 of the Nehru Constitution. That is what I have in view. I am only drawing the attention of the House to that.

Chairman: What number is it in the Nehru Constitution?

Sir Tej Bahadur Sapru: Clause 72; and section 118 of the South Africa Act of 1909. May I, with Your Lordship's permission, read it for the information of the Committee? Section 118 of the South Africa Act of 1909 runs as follows:—

> "The Governor-General in Council shall, as soon as may be after the establishment of the Union, appoint a commission, consisting of one representative from each province, and presided over by an officer from the Imperial Service, to institute an inquiry into the financial relations which should exist between the Union and the provinces. Pending the completion of that inquiry and until Parliament otherwise provides, there shall be paid annually out of the Consolidated Revenue Fund to the administrator of each province—
>
> (*a*) an amount equal to the sum provided in the estimates for education, other than higher education, in respect of the financial year, 1908-09, as voted by the Legislature of the corresponding colony during the year 1908;
>
> (*b*) such further sums as the Governor-General in Council may consider necessary for the due performance of the services and duties assigned to the provinces respectively.
>
> Until such inquiry shall be completed and Parliament shall have made other provision, the executive committees in the several provinces shall annually submit estimates of their expenditure for the approval of the Governor-General in Council, and no expenditure shall be incurred by any executive committee which is not provided for in such approved estimates."

Some such provision, I submit, having due regard to the fact that the Indian States are coming in, will have to be made in the constitution in order to get over the interim period.

Chairman: What about Section 74 of the Nehru Report?

Sir Tej Bahadur Sapru: Section 74 is simply this:—

> "Pending the completion of the said enquiry, and until Parliament has taken action under Clause 68, the existing sources of revenue and the financial relations shall continue to be in force."

Section 74 and Section 72 really are based on Section 118 of the South Africa Act. The idea was borrowed from Section 118 of the South Africa Act.

Chairman: Then what happens till that Committee has reported? Do things go on as they were?

Sir Tej Bahadur Sapru: Well, until that Committee has met and reported, the Governor-General in Council must be vested with certain powers to get over the period of transition. Otherwise the whole thing will be held up.

Chairman: Would you give the Committee a time limit, or would you make it like this Committee?

Sir Tej Bahadur Sapru: Well, I fancy that the task that you are entrusting to these two Expert Committees, suggested by Lord Peel, will be a very heavy and a very onerous one; and it will require very careful examination of the accounts and of the systems prevailing in various Indian States and in various Provinces. I think you should be prepared at least for one year. For the first year of the constitution, you will have to make a provision of some sort or other in order to carry on the administration from day to day; and the recommendations of this Committee can only come into effect after the first year, when they have been laid before the Legislature and approved by the Legislature.

Chairman: And it would be for the new Federal Government to appoint the Committee?

Sir Tej Bahadur Sapru: It will be for the new Federal Government to appoint the Committee, unless, of course, we can come to an agreement in advance.

Sir Akbar Hydari: My Lord, I have been asked by the members on this side to say, that we consider it essential that the Report of this Committee should be before us before we can join this Federation; that we cannot first join the Federation and leave it to the future Federation to say and determine the very important questions as to what shall be the taxation which it shall be within the province of the Federal Government to impose, questions as regards the contribution, and questions as to the proportion in which the different federating Units would have to undertake responsibility as regards contribution, and so forth. I thought that throughout it was contemplated that this Committee should be formed and its Report placed before those who were going in the first place to give a decision on it, and then that it should be placed before the various Indian States to say that, if they come into the Federation, this shall be one of the responsibilities, this shall be one of the conditions on which they enter.

Chairman: The position then is this. You say: "Well, we cannot say whether we will come into the Federation till we have seen the Report of that Committee."

Sir Akbar Hydari: Yes.

Chairman: Now, that being so, it is quite clear that, if that is right—I am not saying it is not for a moment—if that is right, of course, it is not for the Federation to appoint the Committee, because, till the Committee has made its Report, *ex hypothesi* the

Federation has not come into existence. The making of a Report by the Committee, and your approval of the Report, is a condition precedent to your entry into the Federation?

Sir Akbar Hydari: Yes.

Sir Maneckjee Dadabhoy: Unless Sir Akbar Hydari has changed his mind, my impression is that Colonel Haksar agreed to the suggestion that we should go into Federation at once, and enquiry was to be started afterwards.

Sir Akbar Hydari: No, I do not think that is so.

Dr. Shafa'at Ahmad Khan: I put that question myself, My Lord.

Sir Akbar Hydari: It was with regard to one question as to ceded territories; but, with regard to most of the questions, what we desired was that . . .

Chairman: Let us just follow you out. I want to get it quite clearly. Now, that being so, who do you say ought to appoint the Committee?

Sir Akbar Hydari: His Majesty's Government.

Chairman: Then your theory is this: His Majesty's Government must appoint a Committee to report upon these particular questions; and when you, the States, have seen their Report, you will then say whether, on that Report, you are willing to come in. Is that it?

Sir Akbar Hydari: What I say is merely this: that this Expert Committee would take the place of this sub-Committee on Federal Finance; that, as the Federal Finance sub-Committee had not the time or all the data available, it makes over all these enquiries to this Expert Committee; and then the same procedure would be followed as would have been followed by the sub-Committee if all this data had been before them.

Chairman: That Committee, I rather gather, according to you, would meet in India?

Sir Akbar Hydari: I suppose it would have to meet in India in view of the various data which are required.

Lord Peel: I was not quite clear about Sir Tej's proposal. Does he want to apply that Section 118 of the Constitution of South Africa Act only to the relations between the Federal Government and the Provinces, or also to the States?

Sir Tej Bahadur Sapru: The two are closely connected with each other, and there must be co-ordination between them. My suggestion is that you must appoint a Committee which will go into the whole question of the relation of the Provinces and also of the States. But in any case, whether you accept my suggestion or Sir Akbar's you will have to make provision for the interim period.

Sir Akbar Hydari: That was not my own personal view only, but the view of the States.

Lord Peel: This Section 118 is rather drastic. Is it to apply to the relations of the new Federal Government to the Provinces only or to the States?

Sir Tej Bahadur Sapru: I say both.

Lord Peel: I do not know what the States would say to that.

Lord Lothian: The great distinction is that the constitution of South Africa is a Union, not a federation at all; and all powers, including the right to amend the constitution, vest in the Union Parliament. I do not think you can really draw a comparison between a constitution which brings in a Central Government, the Indian States, the Provinces, and the Federation, and the constitution of South Africa in which was created a single unitary government which devolves certain minor powers on what used to be the old Provinces.

Sir Tej Bahadur Sapru: But until the Federation comes into existence, what are we to do? Either the Federal Government must impose its will or some outside body must do so.

Lord Peel: But are you contemplating a long interim period? Suppose the Expert Committee is set up directly after this Conference closes, it will proceed immediately upon its task.

Sir Tej Bahadur Sapru: The date at which you will appoint the Committee is not material from my point of view, but the recommendations of the Committee will have to be endorsed by the Federal Government. I am not going to oppose Sir Akbar Hydari if he wants a Committee appointed now, but a stage will be reached when the recommendations of that Committee will have to be endorsed by the Federal Government.

Sir Akbar Hydari: They will have to be endorsed by the different federating Units, not by the Federal Government. What we hold is that this is one of the conditions precedent to the federating Unit's determining whether it will federate or not.

Mr. Jayakar: I do not quite understand the point raised by Sir Akbar. He said he was expressing, not only his own view, but that of the States Delegation. Is it his view that there is going to be no Federation until this Expert Committee has been appointed, has made its Report and submitted it to the Units, and they have agreed to it?

Sir Akbar Hydari: That is the position so far as the Indian States are concerned.

Mr. Iyengar: The impression that we all had as the result of our deliberations is that the States had come to certain definite principles upon which this financial adjustment should take place, and that the details were to be examined by an Expert Committee. I quite agree that the words which have been employed in paragraph 4 of our Report on that view are hardly reconcilable with the impression that we received. I am quite free to admit that what I am now asking Sir Akbar Hydari to consider is simply this. If the acceptance of the recommendations of the Expert Committee

later on is the condition precedent to their expressing their desire to join or to keep out of the Federation that we start, does he think that, as that option to join or keep out of the Federation is still open to all States, we should proceed to construct this scheme of federation and put it in the Act of Parliament, leaving it to the States to choose whether or not to come in? I believe there is a clause to that effect in the Federal Structure Report. Or does he say, on the other hand, that we should not proceed to enact any clauses in the Federal Constitution until the Report of the Committee of Experts has been before us and we have had an opportunity of seeing whether those clauses are to our mutual advantage or not?

So far as the clauses in the South African Constitution and in the Nehru Constitution, to which Sir Tej Bahadur Sapru referred, are concerned, and which also embody the principle for which we are now contending, I may say, Lord Chancellor, that the idea of an interim arrangement is perfectly consistent with our proceeding to draft and to enact the constitution, because even when the Montagu-Chelmsford Report came out in 1919, there were clauses in the Reforms Act which provided for the separation of Provincial from Central finance after recommendations by a Committee which was to deal with the matter; and the Meston Committee was set up. The Meston Award is well known in Indian finance. That Committee was set up after the enactment of the new Montagu-Chelmsford Constitution, and it was provided that it should make its Award so as to separate the finances of the Provinces and make an adjustment between Central and Provincial finance, and that until that took place the existing state of affairs should continue. The Devolution Rules provided for the gradual re-adjustment of many items of Provincial contributions, so that they should be done away with in the course of seven years, after which there would be a complete separation of Provincial and Central finance.

I believe we were all under the impression to which Sir Maneckjee has referred. Colonel Haksar gave us the definite impression that he was asking us to concede many things because they were going to come into the Federation on any account, and the questions of detail might well be left over to an Expert Committee.

Chairman: Will you kindly tell me if the Meston Award was made before the 1919 Act or after it?

Mr. Iyengar: After the 1919 Act.

Chairman: But before 1921?

Mr. Iyengar: The Act had already been passed. The award was given so as to be put into operation after the first elections had taken place.

Sir Akbar Hydari: I should like to make it clear that it is perfectly open for this Committee to meet and to make its Report; and it is perfectly possible to frame your Federal Constitution, which you have decided will be presented to the federating Units, so far as the Indian States are concerned, for each of them to take

or to leave, on the basis of the Report. Before a State comes in, it must have some sort of picture of the situation and definite proposals of some sort to show what are the financial implications of its entering the Federation. That is all that I say. It is perfectly possible for you to construct your Federal finance proposals in any way you like, and it will be perfectly open to us to come into the Federation or not. You will have to balance the advantages and disadvantages of our States coming in or not according to the way you construct your picture.

Mr. Iyengar: But we assume that, if these Expert Committees proceed on the lines we have indicated and follow the principles we have given them for their guidance, then you will find no difficulty in joining. It is on that footing that we are proceeding, but you now say the whole thing is doubtful.

Sir Akbar Hydari: If there will be no difficulty in joining, then we shall join!

Chairman: Do you envisage members of the States being members of this Committee?

Sir Akbar Hydari: There will have to be some experts from the States, yes.

Sir Tej Bahadur Sapru: Oh, yes, certainly.

Sir Akbar Hydari: There will have to be experts who will bring up the Indian States' view. I do not know, but I think you will have to have people who will bring forward the Indian States' point of view. Otherwise, how will that Committee be a Committee which will be in possession of all the information?

Chairman: Supposing the Report is unanimous—that is to say, that your experts agree with the other experts—do you come in?

Sir Akbar Hydari: Sir, the difficulty is this. There can be no one representative of the Indian States, and you have not said that either the Indian States come in as a whole or they will all remain out of the Federation. What you have said is that you have left to each individual State its liberty of action, its liberty of coming into the Federation or not. And that definitely implies that you will have to place before each State the proposal under which you are offering it federation. I mean, even if you had Indian States representatives on those Committees as representatives of the Indian States, still those representatives cannot bind the States which are outside. I am simply putting my point, and I am asking how that is consistent with the Indian States outside. I do not say that is an obstructive position; I only want to make it clear that it is a position which is implied in the very nature of the position of the Indian States. So far as the Provinces and so far as British India are concerned, they may be in the position in which the Union of South Africa was, as Lord Lothian has very rightly pointed out; but so far as the Indian States are concerned they are in a group quite outside, each with its own power of sovereignty, its own liberty of action of coming into the Federation or not.

Chairman: We have got a very old proverb in England—it is perhaps rather a rude proverb to apply to a thing like this; but you do not want to "buy a pig in a poke," quite rightly. Now, what you want to say, is, "Before any State comes in, it must be in a position to know on what terms it is coming in." You say, "Now, Hyderabad"—for example, let us take your own State because it is convenient, and you are the great State, if you will forgive me for saying so—"Hyderabad, before it comes in, wants to know (a), (b), (c), (d), (e), (f)." Now, I would like to know, if you would kindly help me. What are (a), (b), (c), (d), (e), (f)? First of all, I know from what you say, that as regards (a), let us say, before Hyderabad comes in you want to see the Report of this Expert Finance Committee. Then you say, "Before Hyderabad comes in we want to see (b)." Now, what is (b)? How many conditions precedent are there? Do you want to see the whole draft Act of Parliament before you come in?

Sir Akbar Hydari: Oh, yes.

Sir Muhammad Shafi: Will the Indian States have a voice in the selection of the personnel of this Expert Committee? If so, will it be the Indian States who have previously expressed their willingness to come into the Federation, or will it be the Chamber of Princes, or what?

Sir Akbar Hydari: So far as the Chamber of Princes is concerned, I should like the reply on its behalf to be given by its honoured Chancellor.

H.H. The Nawab of Bhopal: The Chamber of Princes would like to be represented, and I think they would send their representatives. There would be no difficulty in that.

As I have been asked to speak, I will just add that I am very reluctant to say anything which may be regarded as impeding our progress, or which is likely to delay the consummation of the Federal idea; but, from the point of view of the States, I am afraid it will be necessary to have the Report of the Expert Committee before we shall be in a position, as far as we are concerned, to join the proposed Federation.

Lord Peel: I do not want to interrupt the discussion, but I was rather sorry to hear what His Highness The Nawab of Bhopal said about representation on the Expert Committee, and also, if I may say so, what Sir Akbar said about States' representatives on it. My clear conception, and I think the Committee's conception, was that it was not to be representative. There would not be States' experts or Provincial experts or anything of that sort, but experts—plain experts—who were simply chosen for that reason, and not men who come on as States' experts, who are going to advocate strongly the position of the States. That is precisely what we do not want. I mean, you may decide to have it; but do not be under any delusion; that is not what the Committee recommended.

Sir Akbar Hydari: My Lord Chancellor, I am perfectly prepared to accept that definition of the qualifications for the Expert Com-

mittee, so long as we have really only experts without having any point of view with regard to one part of India or another. I shall be quite glad to have that and allow the representatives of the different interests to give evidence before this Committee.

Sir Mirza Ismail: What is really wanted is an impartial Expert Committee.

Chairman: Sir Akbar, supposing you had an impartial Committee like that, and they, being impartial, made an impartial Report; are you accepting it and coming in?

Sir Akbar Hydari: I think, Sir, you must give us credit for also being people who will see that there is an impartial Report and that the Report has balanced all considerations very fairly; and therefore it is most probable that a State like mine will accept it. But I cannot say that unless and until I have seen the Report.

Sir Maneckjee Dadabhoy: Who will judge whether the Report is impartial?

Mr. Zafrullah Khan: May I put the difficulty to Sir Akbar broadly? There are two positions, as I conceive it, Sir Akbar Hydari. One is that we settle here the general principles. We cannot do more than that, even if we are fortunate enough to do that. And, on a survey of those general principles and their implications, the States, or at least as many of them as represent not less than 51 per cent. of the population of the States, signify their willingness to come into a scheme of federation of that kind, subject of course to their safeguards which they have rightly emphasised on every occasion. Then they must submit to leaving the decision of several questions of detail—very important questions no doubt, but questions of detail as compared with principle—to certain impartial Expert Committees' investigations and Reports. Will they take that risk? That is one position. I am not saying they should do that. In that case, of course, one can go forward with the framing of the constitution, and the general rules and the details will be filled in as those Reports come in. When those Reports come in, any one or more, or perhaps all the States, or perhaps British India on the other side, or some Provinces, might consider that, in this detail or in the other detail, the Report is not fair to them or is not equitable to them. But, to that extent, their general willingness to come in will have imposed that risk upon them. Well, that is one position; that is a position which we can understand, and on the basis of which we can continue to devote our time and energy to framing a constitution.

On the other hand, there can be another position, and it is this. The States say: Well, we are willing to come into a Federation—we accept these principles; but we cannot finally tell you whether we are coming in until we look at all these details. There will not only be this financial Expert Committee; several others might have to be appointed to work out in detail the actual concrete figures and facts, and so on. But if they take up that attitude, then the position

to my mind is this. You frame the whole detailed constitution, the draft of the Bill, the draft of the Rules, and the different co-ordinations and adjustments that are to take place, and put that before each individual State; you give them the choice of whether they will come in or not. The position then might be that, although as many States as represent more than 51 per cent. of the population had given their consent to coming into a Federation of which the principles were approved by them with regard to certain details, either you may have no States coming in at all, or you may have such a small number coming in that you could not proceed on the basis of an all-India Federation. The position then would be this, that we should have to start all over again from the very beginning, scrapping the whole of the work of the Conference and its Committees, and so on, in order to frame a constitution proposed only for British India. This would be an impossible position, and I want to know from Sir Akbar Hydari to which of the two positions he is willing to give his adherence.

Chairman: I quite understand referring a thing to an impartial committee and then accepting its decision. May I be permitted a personal reminiscence. Many years ago, a gentleman who had gone to arbitration came to consult me on how to get out of the award. I said, "Well, but you went to arbitration, and therefore you cannot get out of the award." His reply was, "Call that arbitration! Why, he decided against me!" Well, I think you must adopt one position. If you say it is to be an impartial committee, would it not be wise to say whether it decides a little bit against this side or a little bit against that, that you accept its decision?

Now, about three-quarters of an hour ago, Sir Provash Chunder Mitter was in the middle of a speech, which was interrupted. I will ask him to resume.

Sir Provash Chunder Mitter: As Sir Tej Bahadur Sapru has pointed out, there might be a transition period. Another speaker —I think it was Mr. Jayakar—suggested that it might be open to States to come out of the Federation later on after the interim period.

Mr. Jayakar: I did not suggest anything. I wanted to know the position which Sir Akbar Hydari was taking up.

Sir Provash Chunder Mitter: Here is the unanimous Report of the Federal Finance sub-Committee, to which the present representatives of the States were parties. Can we not go on with this Report, and, whether we adopt what Sir Tej Bahadur Sapru has pointed out, or something else, during the transition period, come to the decision that we proceed on the basis of this Report? After the transition period is over, then, if any State wants to come out, it may come out, but subject to the one condition that, if there be less than 51 per cent., they will not be allowed to come out.

Mr. Sastri: Sir Provash Chunder Mitter is opening up a very dangerous issue; we have never before talked about coming out.

Sir Provash Chunder Mitter: It is just as well to have our controversies at this stage rather than later on. I should like to explain it in this way. If we adopt the Report of this sub-Committee, and if we have also a period of transition, then, during that period of transition, without committing ourselves finally, we do commit ourselves in the first place to this, namely, that during the transition period—three years, or whatever it may be—these will be the financial arrangements. After the transition period is over, some States at this stage will agree to take the risk of the decision arrived at within the transition period. Those States which take that risk will not be allowed to come out; but if we find 51 per cent. of the States are willing to take the risk, we can go ahead. There may, however, be one or more States which will not give an unconditional acceptance, and for them only I am prepared to agree to this arrangement. If we start with the fact that 51 per cent. of the States are not willing to take the risk of arbitration, then we know where we are; but I entirely agree with Sir Tej Bahadur Sapru that it may be very necessary to have provisional arrangements for the interim period. On the other hand, if the Committee is an Expert Committee, as I think it should be—I have no hesitation in saying that the Committee should be an Expert Committee—then, going back to my point, the representatives of the public should have an opportunity of discussing its Report. For what purpose? Not for the purpose of coming out, but for the purpose of making their suggestions. After those suggestions have been made, they may be accepted. By whom? Either by His Majesty's Government or by the future Federal Government. I would certainly prefer the future Federal Government, but Sir Akbar Hydari's intervention makes it clear that we may not have the States in the future Federal Government till the States know where they are.

To sum up, my position, therefore, is this. If we have to start with 51 per cent. agreeing to submit to arbitration, we can go ahead; and I should like that, because it is no good delaying matters. There are many points of view from which I am against delay. I am in favour of starting the Federation as early as possible; but, if that cannot be done, then I am afraid that, after the Expert Committee has been set up and has reported, some sub-Committee of this assembly, or some other sub-Committee must have its say. There is no escape from the proposition.

Sir Maneckjee Dadabhoy: I do not understand you at all.

Sir Provash Chunder Mitter: I am very sorry; I cannot make it clearer. If 51 per cent. would agree to the risk of arbitration there is an end of the matter. If 51 per cent. do not agree to the risk of arbitration then, rather than leave it after all this trouble, I am willing that the thing should be discussed further with a representative committee.

We have discussed this point, which is a most important one, very fully. The next point is this. In the other observations I

am going to put forward, I am going to put them forward with the idea in my mind that, if it commends itself to this Committee, some of these points may also be referred to the Expert Committee. I am not putting forward those points with the idea that we must here and now come to a decision, because such a decision will not be possible as we do not know the facts very fully, and as we have not all the materials before us.

With these preliminary observations, I would say that it would be advisable not to go into the question of past burdens; but if it is insisted on, then past burdens on both sides should be taken into consideration, for the result would be that the Expert Committee would make their recommendations——

Chairman: Would you have a Statute of Limitations?

Sir Provash Chunder Mitter: No, Sir.

Chairman: How far do you go back?

Sir Provash Chunder Mitter: I will tell you, Sir. Perhaps I was too hasty in saying " No ". If the other side says no Statute of Limitations, then there will be no Statute of Limitations on the British side; but I do say, as practical men, we should fix a limit beyond which we should not go. That is my view. If the intention be to go back a hundred years, then we shall never end; but from my point of view, as I am against entering into the past, it is not for me to answer that. Your Lordship's question, if I may say so, clears the point very much. If you do not have a Statute of Limitations, then you will be going into a historical maze. Therefore drop the past—that is my view—but, if you do not drop the past, I would like the other side to say how long. Those are the observations I put forward on this part of the Report.

Now, Sir, another important point of principle is this, that in the future Federation there ought to be, as quickly as possible, enough resources, to which all the units of Federation have contributed, for the Federal burdens. I lay stress on the words " as quickly as possible." It will not be fair that the British Indian contributions should continue for an indefinite period of time. Therefore the Expert Committee should be asked to advise how soon the British Indian contributions should cease; and as soon as the British Indian contributions cease the only contributions should be contributions made by the Units of the Federation. That point should be specifically referred to the Expert Committee. My friend, Dr. Ambedkar, wants me to clear up my point. My point is this. I will refer to the Income-tax by way of illustration. The Income-tax is a purely British Indian contribution. I realise that at the present moment a part of the Income-tax, if not the whole of it, or a substantial portion of it, will have to be paid; but the Expert Committee should fix a definite time limit from which point of time either the Income-tax will cease to be paid or the Indian States will bring something

into the common pool which will be the equivalent of that. That is my point. Or else, supposing the future Federal Government mismanages its affairs, then indefinitely this British Indian contribution will have to be paid. I say that that point should be specifically referred to the Expert Committee.

Now, Sir, as I am on the question of debt, I will make this further observation. The last paragraph on page 5 of the sub-Committee's Report says:—

> "It therefore seems to us that, if it were found, after investigation by the Expert Committee, that all the obligations were covered by assets, the whole of the pre-Federation debt should be taken over by the Federation. While, however, this seems to us to be the probable result of a close investigation, we do not rule out the possibility of a finding by that Committee that a certain proportion of the pre-Federation debt should equitably be classified in the first instance as 'Central'."

I accept that, Sir, on the principle that this Federation is going to take up, so to say, the business of the past.

Chairman: Would you take into consideration betterment as well as the expenditure on capital?

Sir Provash Chunder Mitter: I would take the whole thing into consideration. But, if you look at it from that point of view, the recommendations of the departmental Memorandum of the Government of India, as criticised in the second paragraph on page 6, pre-Federation debt, hardly arise. What is laid down in the last paragraph of page 5 is a better way of dealing with the realities of the position. But I entirely agree that, for the credit of India, the resources which are now available to the Government of India, and to the Provincial Governments, and also the future resources of the Federal Government should be at the disposal of that Government for the payment of the debt; but *inter se* between the "Central" subjects and the Federal subjects, *inter se* between Federation and Provinces, there ought to be equitable adjustments, and those equitable adjustments made as early as possible, and certainly not later than a definite period. I am not mentioning the period because the Expert Committee will be in a better position to deal with that. Now, if it be not possible to adjust *inter se* between these elements, then, as soon as that period is over, the Federal Government should be prepared to have recourse to some form of taxation which will place the burdens equally on the federating Units; and from that point of time they must start repaying the extra contribution, if any. There may not be any, but if there is any, the repayment must be to the "Central" heads of revenue and to the Provincial heads of revenue.

Now, Sir, I will next turn to paragraph 15: "Taxes on Income." I suggest that the Committee may be asked to enquire specifically on the point that taxes from Income or sources which are purely local in character may be actually taxed and collected

by the Provinces. I say this with particular reference to taxes on land and house property; but it may or may not be extended to taxes on Income derived from different sources locally. But I lay stress on taxes on houses and property, and there is a reason. As the assessment and collection of Land revenue is a Provincial subject, and as the tax on land and house property has an intimate bearing on it, it will be an advantage if the same authority assesses and collects both. In this connection, the past history of Income-tax in British India, I may point out, will no longer operate after federation. As Corporation tax is going to be a Federal source of taxation, this separation will make future adjustments between Indian States and British India easier. Shortly, Sir, my idea is this. As regards Income-tax on business, that will be more or less Federal; because, if Corporation tax takes its legitimate place, if more and more joint-stock concerns or big concerns start, then they will have ramifying business in more Provinces than one. That is a source of revenue which the future Federal Government may well claim. On the other hand, as regards land tax—you may call it Land revenue or Income-tax on land—there will be less chance of conflict, less chance of injustice, if you gradually hand it over to the Province. I should like to make one point clear. I do not want this change to take place, say, from the very next year, but I want to hold this forward as an ideal which will help us in the future in the adjustment of our revenue.

Lord Peel: I understand that you think that the income should be divided according to the sources from which it arises, and part should be collected by the Federal and part by the Provincial Government?

Sir Provash Chunder Mitter: What I do mean is that Income-tax from landed property as also purely local income should be a Provincial source of revenue. If the Income-tax on landed property be a Provincial source of revenue, it has an intimate bearing on the assessment of Land revenue. Take landed property in the towns. That is assessed to Land revenue; it is also assessed to Income-tax. Therefore, if you have one authority dealing with it, it will be better dealt with.

Lord Peel: But you would allow the Federal and the Provincial Governments to raise Income-tax on different classes of property or sources of income at, possibly, different rates?

Sir Provash Chunder Mitter: That is my second point. I will come to that immediately. But what I do say is that, in future, when this question of Federal responsibility is over, redemption charges and debt charges can be met. At that point of time, Income-tax from land only—that is to say, from land or anything standing on land, in other words, irremovable property—should be a Provincial source of revenue. I am speaking of land in towns or villages. At the present moment, for the purpose of Land revenue assessment, you assess not only agricultural land but also non-agricultural land for your Land revenue.

Mr. Jayakar: You do not have Land revenue on house sites?

Sir Provash Chunder Mitter: May I explain a little more? Assessment is made on every plot of land. That assessment is either actual rent paid or rent which ought to be paid; and in assessing an "estate", every plot of land in that "estate" is taken into consideration. Let us say that one lakh is the total rent roll; out of that one lakh, so much is left to the landlord and so much to the estate. Let me make it plain that *Khas mahal* in towns do not go rent free; they are also assessed with the land.

The point I am making is not a new suggestion. In the United States, the revenue required for the several States is derived chiefly from a tax on property. If you have this, then you have one assessing authority for a particular type of property, and in assessing the land you do take into account the income of the property; that is the basis of the assessment. This also will be more acceptable according to the principle set out on page 9 of the Report, in the second paragraph, where it states that:—

> "The right to impose and administer a tax should be vested in the authority which receives the proceeds."

My suggestion will make it fall more into line with the point there adumbrated.

Now let us look at it from another point of view. At some point of time in the future we do contemplate that the Income-tax will be distributed between the Provinces. Now, if one portion of the Income-tax—namely, that portion which is assessed on land or on anything standing on land, immovable property—be made a Provincial source of assessment and revenue there will be more justice in it; because if in a particular Province the assessment of Income-tax on land is heavy, that Province will get the benefit of that heavy assessment. On the other hand, it presents no difficulty in principle such as the ramifications of the sources of business income. Therefore, in the case of ramifying businesses, leaving aside the Corporation tax, you must distribute it between the Provinces on some basis which may be determined upon; but in the case of what I may describe as purely local taxation on land and immovable property and other purely local income, each Province gets more or less what it should. It really comes to this, therefore, that Income-tax on house property and on vacant sites, as also purely local income, will belong ultimately to the Provincial Governments.

Then, with regard to paragraph 16, Provincial Contributions, I am not quite clear, reading this and the next paragraph—paragraph 17—together, whether in future the States also will contribute. In paragraph 16, nine lines from the top, there is the following sentence:—

> "The deficit, in so far as it arises from the above cause, should, we suggest, be met by contributions from the Provinces, to be divided between them either on the basis of

their respective revenues or of population, or according to some other defined method. The Expert Committee should consider what is the most appropriate basis. This basis need not necessarily be the same as that on which the Income-tax proceeds are distributed. Differentiation between the two methods might be used as a means of partially adjusting the burden on Provinces which are specially hard hit by the existing distribution of resources between them."

In paragraph 17, however, the first sub-paragraph says:—

"In the scheme proposed above, the Federal burdens will be spread over all the Units of the Federation in a precisely similar manner except for—

(*a*) The above-mentioned contributions from the Provinces, until such time as they are finally abolished;

(*b*) Such direct or indirect contributions as are, or have been, made by certain States, of a kind which have no counterpart in British India; and

(*c*) Varying measures of immunity in respect of Customs and Salt enjoyed by certain States."

If by these two paragraphs it is meant that the Expert Committee will examine and take into consideration the contributions *inter se* from the different Provinces of British India and the contributions from different States, I have no objection; but I certainly would object if we found, after examination, that the contribution from British India was far in excess of the contribution from the Indian States, and I would also object if a particular Indian State made a large contribution and that contribution was sought to be taken advantage of by every Indian State. I want to make that point clear. I have no objection to this enquiry, but in the course of that enquiry these points should be kept in view.

With regard to differentiation, in the last sentence of paragraph 16, Provincial Contributions, the last three lines of the first sub-paragraph which I read just now—namely, on the question of differentiation—I suggest that it would be a mistake to come to a decision in advance. If we refer this question as it is to the Expert Committee, we shall have more material on which we may justly decide this question. Therefore, I would ask Sir Tej Sapru to bear that aspect in mind, too. He will be in a better position to come to a decision when he gets the Report of the Expert Committee. Therefore, I would leave the Report as it is on this point.

Now, Sir, I would draw the attention of the Committee to one item in paragraph 10, Classification of Revenues, *viz.*, "External Customs, including Export duties." I have to point out that my suggestion, that Export duties should not be considered as Federal sources of taxation, has not been discussed by the Finance sub-

Committee, although I raised that point. I again draw attention to the United States Constitution, and I desire that this question should be examined by the Expert Committee. I do not want this Committee to come to a decision immediately.

Lord Peel: What do you want to have examined by it?

Sir Provash Chunder Mitter: I want the Expert Committee to discuss the question whether, as in the American Constitution, no Export duty should be imposed on a Unit unless that Unit consents. At the present moment the source of Export duties is a matter in which my Province is vitally interested with regard to jute. What I do want the Expert Committee to consider is the idea of forbidding the imposition of Export duties without the consent of the federating Units, as in the American Constitution. How much—that should be ascertained. What is the total amount of Export duty now realised and likely to be realised in the future? Whether they should continue to be levied in spite of the objection of the Province or Provinces concerned, and if they cease to be levied, in what other way the necessary funds can be found? That I want the Expert Committee to examine and consider.

Lord Peel: I think you are widening, are you not, the Expert Committee's job a great deal by giving them a very wide discretion as to whether Export duties should be permitted? Is not that rather a matter of wide principle? Is that exactly a thing for an Expert Committee to examine, as to whether generally Export duties should be permitted in a Federal Constitution?

Sir Provash Chunder Mitter: Yes, generally speaking that is so; but there is an important point, and that point is whether without Export duties the Government can collect sufficient revenues to meet its obligations. We may have to have Export duties for a temporary period whatever the question of principle may be. Therefore, I want in the first instance the materials. How much is realised from Export duty? How does the realisation of Export duties affect the Provinces concerned? For example, on the question of jute, we are told there is a monopoly. Well, it being a monopoly, you can have a jute Export duty without affecting the interests concerned. But we in Bengal know it does affect the interests concerned; at any rate, it does affect the ryots. Therefore there are questions of fact which have to be ascertained and can be ascertained. After those questions of fact have been ascertained we shall be in a better position to deal with the question of principle. I quite agree, My Lord, that the question of principle is not a function of the Expert Committee; but there are facts to be ascertained.

Then, Sir, under 10, Classification of Revenues, I find the fourth item:—

> "Excises on articles on which Customs duties are imposed (with the exception of excises on Alcohol, Narcotics and Drugs)."

I think the language may well be a little wider. The language may be:—

> "Excises on all articles (with the exception of Excises on Alcohol, Narcotics and Drugs)."

I do not know; perhaps that is meant. What I mean is this, that generally speaking the Provinces should get the Excises which they have at the present moment. We cannot afford to let the Federal Government have these. Therefore, even where on a particular commodity no Customs duty is levied, it may be quite open to the Federal Government to levy an Excise duty on that commodity so long as the Excise duty on the existing Provincial sources is left to the Provinces. If you leave it in its present form, the Federal Government may come to the conclusion that, on a particular commodity, no Import duty need be imposed, or no Export duty need be imposed; but that commodity might be a fairly fruitful source of revenue. Therefore, all that I want is that the words "on which Customs duties are imposed" should be deleted; but these words should remain: "(with the exception of Excises on Alcohol, Narcotics and Drugs)."

Lord Peel: Had you anything in your mind on which you might wish to put Excises without a Customs duty? I suppose it would only apply to something which was entirely produced in India and nowhere else. Otherwise you would probably want a Customs duty, because you would not want to prejudice your own product against the imported production. Is there any subject you have got in your mind?

Sir Provash Chunder Mitter: I will come to specific points, but I have in mind your general observations on page 8:—

> "We agree that, if such taxes were levied, the proceeds should go to the Provinces and the States. In any case we think that both the rates and the general conditions under which such taxes would be imposed should be subject to the control of the Federal Government and Legislature."

My main point is: Why should it be limited only to the question of imposition of Customs duties?

Lord Peel: The point is rather academic, is not it?

Sir Provash Chunder Mitter: No; take, for instance, tobacco. It may not be academic. As I said in my opening speech, I am against the imposition of taxes on chillum tobacco. Let me explain what that means for the benefit of my British colleagues. My Indian colleagues ought to understand what chillum tobacco is, unless they have become so Anglicised that they have forgotten their Indian language. What I mean is this. Tobacco in the indigenous form is smoked by the hookah. I am opposed to imposing a tax on that, at any rate for Federal purposes. With regard to cigars, pipe tobacco and cigarettes, that is a subject of Customs duty, and may well be the subject of Excise duty as well. I am quite willing to submit to that as a source of Excise revenue

for the Federal Government. Whether you do it by Customs or any other way, that is another matter. But let us suppose that Mahatma Gandhi presses more insistently for the abolition of the Salt revenue, and says that Indians who smoke tobacco should pay the deficit. That is a concrete example. If you reduce the Salt tax by half you have to find that half by other sources of revenue.

Chairman: That sounds rather like an election speech!

Sir Provash Chunder Mitter: I may point out that there is a fruitful source of much revenue. It is not exactly an election speech I am making. I want to ask what it is we gain by keeping in those words " Customs duties are imposed." If we do not keep those words in, our hands will be less tied. I certainly agree that we should keep in the words " (with the exception of Excises on Alcohol, Narcotics and Drugs) ".

(*The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.*)

Sir Provash Chunder Mitter: I was dealing this morning with page 9, and I have dealt with paragraph 16, Provincial Contributions, and paragraph 17, States' Contributions. I will now go to paragraphs 18 and 19 on page 10. I would suggest that the principle of " no discrimination " should be adopted amongst the Units of the Federation in respect of Federal taxation. This, I may remind you, obtains in the Australian Constitution, where no discrimination is allowed. This is a general principle for which I would plead, but it has a particular application to what we are discussing in paragraphs 18 and 19 on page 10. If I may, I will start with the points which have a bearing as between the British Indian Provinces and the Indian States, because they have a bearing on the principle for which I am pleading. At page 10, under " Cash Contributions," the remark is this:—

> " Cash contributions from States (till recently known as tributes) have arisen in many different ways, and it has been impossible for us to examine the cases of individual States. Nevertheless, we think that there is, generally speaking, no place for contributions of a feudal nature under the new Federal Constitution; "

I agree entirely with that observation—

> " and only the probability of a lack of Federal resources at the outset prevents our recommending their immediate abolition. We definitely propose that they should be wiped out *pari passu* with the Provincial Contributions discussed in paragraph 16 above."

My observation arises out of this, taking this as an illustration. The different Units of the Indian States do not contribute at the same rate—they have to pay different sums, or even none at all; and, after laying down the general proposition that they are of a feudal nature, under the new Federal Constitution contributions of

a feudal nature should not obtain. They go on to point this out from the point of view of meeting the deficit—at least that is how I understand it. Now, my point is that there you are really discriminating between different States. I apply the same argument as to the question of differentiating between British India and Indian India on the question of Income-tax; but the Federal expenses have got to be met, and the question is how to meet them. At the earliest possible moment, the Federal Government should set its house in order. The Federal Government should have resources, either by taxes or in whatever way they can do it—should have its own resources—for meeting its own obligations; and for that reason I suggest that this principle, as a principle, should be applied, and should be applied between British India on the one hand and the Indian States on the other—and between the Indian States *inter se*.

That general principle for which I am pleading also applies to what is stated in paragraph 19. It may be perfectly correct to say that some of the Indian States have been contributing towards the Military expenditure. Well and good. If those Military expenditure contributions were contributions in the past, I have already asked that we should forget about the past; but still, if my friends on the other side of the House decide on such an enquiry, let a similar enquiry be made about British India. But in future, supposing one particular State makes a certain contribution and another State does not, it will lead to endless difficulties. That should be a matter for arrangement between the future Federal Government and the particular State which contributes in that manner; and if we take those contributions as contributions of the Indian States *en masse*, then it comes to this, that some State gets an advantage and others do not. Therefore I would apply the same principle throughout.

Then, Sir, that general observation has a bearing also on paragraphs 16, 17, 18 and 19—namely, while I have no objection to contributions being levied from Provincial Governments in case of emergency, or, as Lord Peel pointed out, either in case of emergency or to preserve the general credit of India, I certainly object on the question of principle that the British Indian Provinces should contribute and the Indian States should not contribute. If the British Indian Provinces are asked to contribute, then the Indian States should be asked to make a contribution on some equitable basis.

Then, Sir, lastly there is the question of the Maritime States which is dealt with in paragraph 20 on page 10. There what is stated is this:—

> "These States, being on the frontiers of India, are in a special position as regards the question of external Customs duties. Here again, we feel that it is impossible to deprive States of revenue of which they are already in possession."

I agree with that. In my opening remarks I accepted that position, that the existing internal duty should be allowed to be retained. But it goes on to state:—

> "One principle which we would lay down is that, in all cases, the Import tariff at the States' Ports should not be less than that at Ports in the rest of India."

There I have an observation to offer, and that observation is this. If the import duty levied be less than the duty levied in British India, then they should be asked to levy the same duty as in British India, the difference going to the Federal Exchequer and their old income remaining with the States. My reason is this. On general principles one cannot agree to internal duties or maritime duties being imposed by Units of the Federation. But these States have to budget for their income and expenditure. Therefore I think we should submit to that extent, namely, that we shall not touch their existing revenues; but, as regards any future increase, that should only be allowed subject to the consent of the Federal Authority, namely, the Federal Government. It has been pointed out by some speakers that that is trenching upon their rights of sovereignty, and obviously it is. But when they agree to come into the Federation on a definite basis, to that extent I take it Their Highnesses are willing to give up that particular right so far as the future is concerned. That remark applies both with regard to internal Customs and the Maritime States.

There is only one other point to which I want to refer; that is the question of Commercial Stamp taxes. With regard to that my position is this. If the States agree to this, we on the British Indian side should not object. Commercial Stamps should be strictly limited to Commercial Stamps proper, and should not be extended to what we call non-judicial stamps, namely, stamps on leases, conveyances and so forth. The revenue from those stamps will remain in the Provinces as it is at the present moment. We used to have stamps on cheques but that has been abolished, though we have stamps on *mundis*. That kind of stamps should be a Federal source of revenue. Stamps on local transactions, such as the sale and lease of land, now constitute a Provincial asset, and that should remain a Provincial asset. That is all I have to say.

Sir Akbar Hydari: My Lord Chancellor, I want to deal only with one point that has been raised. I suppose that will not preclude me from taking part in the discussion later on, if any other point is raised on which I desire to speak. The question has been raised—and we on this side have taken up a united attitude—that we should have the Report of this Expert Committee before we can say whether we will enter into the constitution or not. I want to point out, in the first place, that we stand entirely by every word of what has been stated and agreed to by us in this Report of the Federal Finance sub-Committee. I have simply stated what was

agreed to by the entire Federal Finance sub-Committee at the very outset of their Report. In paragraph 4 they definitely say:—

> "Any theoretical scheme for the division of resources and obligations should, before being embodied in the Constitution, be put to the test of a careful examination of its probable results by some body which is fully equipped for the task. We accordingly recommend that, with the least possible delay after the conclusion of the present Session of this Conference, an Expert Committee should be constituted for the purpose of working out in detail a financial scheme for the Federation, taking as its starting-point the general proposals contained in our Report (subject, of course, to their acceptance by the Federal Structure Committee and the Conference). The Expert Committee must have for its guidance some general principles of the kind set out below, but it should be free to make alternative suggestions if, on closer examination of the facts, a probability is disclosed that any general principles laid down by us would, in practice, prove unworkable. In addition to the Committee's duty of framing a general scheme, there are also many specific points, some of which we mention below, on which its advice should be sought."

That is really the constitution of the Expert Committee; that is its main purpose. It was thought that even the constitution could not be formed until the Committee had done its work. I stand by the principles laid down here. I do not depart from them, I accept them; but I do want to say that, when this Committee is agreed to, it should first of all explore the financial position.

I come now to another point. I should like to invite the attention of this Committee to what was stated at the very outset of the Federal Structure sub-Committee's Report last Session, when we said:—

> "Every member of the sub-Committee reserves to himself the right of modifying the opinions before the final picture is completed."

We have all along been proceeding in this Conference in the direction of trying to fill up a sketch, and when the picture is completed, we shall be asked to say whether we will come in or not. Well, My Lord, as I have said, we accept the position. So far as Hyderabad is concerned, I have gone further; and I have said that, if you are going to confine yourselves to the present revenue and expenditure of India as they are, to the burdens which exist at present, without any compensation one way or the other, and without the imposition of any fresh burdens, I, for one, will not object to a financial settlement of that kind. But we have to go very much further. There are many States which have special claims and so on, and we find that even the Provinces themselves want certain adjustments. All these things require exploration, and unless and until that exploration has been completed it is

surely but reasonable for every federating Unit, and certainly for every Indian State, to reserve to itself the liberty of saying whether with such and such burdens, or with such and such possible burdens, it will prefer to come in or to remain where it is.

It is not a question of referring to arbitration a particular point, where the particular parties interested are there. You will have an Expert Committee, and it will not be a case of a certain State having particular sources of revenue and a particular financial system which will be explored in detail, and then it being said: "You will have to give so much". It is not a Committee to which a State can ask such and such a particular point to be referred. You are asking for the creation of a Committee on which there may be representatives of States—I will come to that point in a moment—but which will certainly be a small body of people who will try to find out how the general scheme of Federal finance should be laid down, without giving, according to the contention of the other side, to each and every individual State any possibility of saying what its particular view is, and then saying whether it will come in or not according to the decision which is arrived at. That is all I want to say on this point; but I would repeat that, in taking up this attitude, the Indian States are not seeking to take up an obstructive attitude. It is they who have offered to come in, and they have tried to make the way as smooth as possible. If you will refer to the latter part of the sentence which I read out, you will see how, at the instance of the British Indian Delegation, we allowed the Committee to have as wide a field of exploration as possible. At first the Indian States wanted to restrict the field of taxation to purely "indirect" taxation; but towards the end they were told that that might mean too great a restriction, and so they gave them a wider field and allowed them to explore the Corporation tax, and so on. The Indian States therefore want to have as complete an enquiry as possible, and I am certain that the experts you will have will be able to complete this enquiry within the time which will be required to complete other enquiries which will be necessitated about other questions affecting the constitution. It is not as if we were trying to obstruct your work; we are simply stating what we have been urging throughout, namely, the individual right of every State to see what is being presented to it and what is the kind of Federation which it is being asked to enter. You have all conceded that it will be left entirely to its discretion to say whether it will be better pleased to remain where it is or whether it will come into the Federation.

With regard to the Expert Committee, I, for one, am perfectly prepared to accept what Lord Peel says, that it should be a body of pure experts without any representative character, if you think that that will be the best way of dealing with the problem. There are several people with very great authority who are with me in thinking that you must have financial experts who have got a reputation for honesty and wide vision, but at the same time it may facilitate enquiry if you have on that Committee members who can

explain to the Committee the different points of view—people who have a knowledge of State finance and who will be able to say how particular measures would be looked at by particular States, and British Indians who can say how they would be looked at from the British Indian point of view, and so on. However, there would have to be an impartial Chairman, and all these people should start with a reputation for being impartial. I am not at all wedded, however, to the idea that there should be any representative character attached to it. All that I say is that we must make the best possible selection, that we must have the matter thoroughly explored, and that we should try to make it as definite as possible and place before the federating Units, including the Provinces, an exact statement of what they will have to bear immediately and what are the further possibilities of additional demands.

Chairman: There is only one point I should like to ask you, but I do not at all desire that you should give an answer to it now. Do you consider that we should fix some time by which people should make up their minds? I mean to say, we are going on and on and on now, and there is no certainty that anybody will ever do anything. I am only thinking whether we ought not to say, "Well, after all, the days of man are three score years and ten," and that we must come at some time to a decision.

Sir Akbar Hydari: I quite agree that we must fix some time.

Chairman: I do not want in any way to prejudice it, but, for instance, let me put a ridiculous thing, which is the way of testing things, as you know, in law. It would be ridiculous to say that we must make up our minds within fifty years.

Sir Akbar Hydari: Quite so. Are you implying that that is the position taken up by the Indian States?

Chairman: No. Do you consider that it would be wise for us to say that we should make up our minds whether we are going to do it or not, or do you think it would be better to let it run on, and hope that in some way it will happen?

Sir Akbar Hydari: But does not that depend upon you, My Lord Chancellor? If you complete your work and His Majesty's Government will draft their proposals.

Chairman: I am perfectly prepared to complete my work, and I am perfectly prepared to go on to-morrow with all those questions that I have put down; and if you will help me to do that ——

Sir Akbar Hydari: I am quite prepared to help you.

Chairman: I am certainly prepared; but the difficulty about it is that some other people say, "We cannot go into this question unless this or that or the other question is decided". I am personally prepared to go into everything and to answer all those questions. Now I agree with you.

Sir Akbar Hydari: So am I.

Chairman: Well, I hope we shall manage to do that, because if all of us keep on saying, "I am not going to discuss (*a*), (*b*) and (*c*) until you have discussed (*d*)," it makes it very difficult.

Sir Akbar Hydari: My position is not that we are not prepared to discuss them. We have discussed and we have decided upon certain principles to which we have agreed. We want the exploration of those principles with reference to particular facts which is necessary before each State is asked to enter into the Federation.

Chairman: Within what sort of time? What sort of time do you envisage for all this?

Sir Akbar Hydari: I should say that an Expert Committee, with the references which this Committee is going to have, ought to complete its work in a year's time.

Chairman: Thank you very much; and naturally, I suppose, they would have to sit in India?

Sir Akbar Hydari: Well, that is a matter which depends upon what the constitution of the Committee is.

Chairman: What I am thinking is this. We cannot keep on asking all you gentlemen to come to England once every six months.

Sir Akbar Hydari: No; I do not say this present Conference—certainly not. But as to whether the Committee should sit in India or whether the Committee should sit in England, as I see it, it would have to sit in India, but I am not wedded to that. All I want is that the Committee should sit in a place where it can best do its work in the shortest possible time.

Chairman: And you think that in about a year's time you would be able, having looked at the Report of the Committee, to make up your mind on that point at any rate?

Sir Akbar Hydari: Which point?

Chairman: The point as to whether the Federal finance satisfies you.

Sir Akbar Hydari: Yes; and by that time all the other points will also be ready, so that you will be able to present before the States practically all the details of a complete picture, or, if not all the details, at least all the salient points to enable them to decide whether they will come in or not.

Chairman: Then you will not be disappointed if we do not do all our work at this Conference?

Sir Akbar Hydari: It depends on what you mean by "all our work". If you mean that you will fill up the details, explaining as to what the minorities should have, what the franchise should be, and all that, I do not think that can be done within the few weeks in which we can be present here.

Mr. Zafrullah Khan: Lord Chancellor, Before I proceed to submit my observations on the Report of the Finance sub-Com-

mittee, may I, with your permission, make a brief reply to a question that you were pleased to put to me on the 25th October at the conclusion of the session?

Chairman: Yes, I should be very much obliged if you would; that would be a great help to me. That is about the Legal sub-Committee's Report.

Mr. Zafrullah Khan: Yes. That subject is alluded to in the first sentence of paragraph 5 of the Finance sub-Committee's Report also, where they say, regarding " Central " subjects:—

> " It seemed likely that a residue of such subjects (notably certian civil and criminal legislation) would remain indefinitely."

You were kind enough to draw my attention to item 16 at page 32 of the Federal Structure sub-Committee's Report, which is described as:—

> " Civil Law, including laws regarding status, property, civil rights and liabilities and civil procedure."

Your Lordship also drew my attention to the Report of the Legal sub-Committee, printed at pages 39 and 40. The Legal sub-Committee considered the possibility of giving Provincial Legislatures a plenary power of legislation over the whole field of civil and criminal law and giving the Central Legislature power to legislate on those matters only which are necessarily the concern of the Central Authority. They found, however, that it would be difficult, if not impossible, to specify or even to indicate in general terms all the matters which should be reserved for the Central Legislature, and that, therefore, it was necessary to give the Central Legislature a wide power of legislation. The scheme that they proposed was that, barring certain subjects which must be reserved for the Central Authority, the Central Authority should have full power of legislation over the whole field of civil and criminal law, with concurrent power to the Provinces to legislate, subject to the restriction laid down in the second paragraph of the Report, that is to say, that in order to maintain uniformity, before they proceed to amend certain Acts they should obtain the previous consent of the Governor General in Council, as is necessary at present. They also went on to say that, supposing there was a law passed by the Central Authority, and a law on the same subject by a Province, then naturally the Central law should have precedence—it should prevail over the Provincial law.

Chairman: That is in the case of a conflict.

Mr. Zafrullah Khan: Yes, in the case of a conflict. That was the Report submitted. Now with very great respect to the very eminent legal authorities who are responsible for that Report, I believe it is possible at least to indicate in general terms, the matters which should be reserved for the Central Legislature and to give the Provinces plenary powers in the balance of the field of civil and criminal law, subject to the restriction laid down in the

second paragraph, which I would still have, that certain Acts should not be amended by the Provinces without previous sanction, in order to maintain uniformity.

Chairman: You say " amended." Do you mean amended, or, in addition to amended, that they should not be passed? All you said was " amended." Supposing there was a new sort of Act coming in like a Rent Restriction Act.

Mr. Zafrullah Khan: Well, the present position, My Lord, is this, that in the rules made under Section 80A, sub-Section 3 (*h*), of the Government of India Act, there is a list of Statutes that are at present in operation; and the provision is that these Statutes shall not be amended in any way without the previous sanction of the Governor-General. That particular list does not say that, with regard to certain matters, there shall be no legislation by the Provinces. Of course there are other provisions which require previous sanction with regard to legislation on certain *subjects;* but I am at present talking of this list, which says that those Acts shall not be amended by any Province without previous sanction.

With regard to the general previous sanction rules, my submission will be that in the field which is left to the Provinces, there should be no previous sanction required except to the extent indicated in the second paragraph. With regard to the subjects left to the Provinces, the Provinces should be free to legislate provided their enactments do not amend the specified Acts.

Chairman: Would you accept, in addition to " amendment," the words " any variation of "?

Mr. Zafrullah Khan: Yes, I mean amendment in a wide sense. With regard to the division of the field, we must remember that, since that Report was written, there has been unanimity on the point that the Central Legislature shall be only one, namely, the Federal Legislature. There shall not be two Legislatures, one for the Federal body and one for the Centre. There is also unanimity of opinion that there shall be one Executive, which shall be the Federal Executive, and which shall also administer any subjects which might still be regarded as " Central." My position with regard to the division of subjects into Federal, " Central " and Provincial, was that I hoped to see, in the course of time, the category of " Central " subjects disappear, not by the process which was indicated by Mr. Joshi—that all of them should be federalised—but that it might be possible to federalise some of them or some portions of them and provincialise the rest.

There are three categories of subjects in this Report, namely, laws relating to international obligations; laws for territories not subject to any Provincial Legislature, and laws affecting any power expressly reserved to the Central Authority or any law for the time being in force. I agree that these should be reserved for what should now be described as the Federal Authority. The next thing I would suggest would be this, that it should be possible to make Federal all laws relating to commerce, banking, companies,

insurance, bankruptcy, contracts, sale of goods, and torts. Some of these overlap, but I have tried to make the categories wide in order to include every kind of legislation that might relate to those subjects. I would also make Federal the law of evidence and the law of criminal procedure. I have not included in this category the law of civil procedure. Even under the present system, under the Civil Procedure Code, the various High Courts have power to add to the rules laid down in the first schedule of the Civil Procedure Code, and that power should continue. With regard to the Penal Code, the difficulty felt was with regard to the States. It was considered that it might be difficult to persuade the States to make the Penal Code a Federal subject, for this reason, that several of the States in their different Penal Codes, which in broad outlines are based upon the Indian Penal Code, have got categories of offences which are not included within the Penal Code. Now, with regard to that, my submission would be that that difficulty could be got over in two ways. One is that the Penal Code could be made a Federal subject, with liberty to the Indian States only to add to the categories of offences laid down by the Penal Code; they could add, having regard to their local conditions, any kind of act or omission which they wanted to make penal.

Chairman: Would you mind helping me with regard to that? I have had some difficulty when I have been thinking of these things and trying to draw something up. Suppose a man in an Indian State commits an offence which is an offence in that State but which is not an offence in British India, and suppose that he escapes from that State to a Province of British India: what happens?

Mr. Zafrullah Khan: There are rules with regard to extradition. The States make representation to their Resident or Political Agent or whoever the officer may be.

Chairman: You would be willing to extradite a man from British India for something which is not an offence in British India?

Mr. Zafrullah Khan: That happens reciprocally. If a man has committed an offence in British India and has escaped to an Indian State, and the act does not happen to be an offence there, he is nevertheless extradited to stand his trial.

Sir Tej Bahadur Sapru: Is there any room for such a thing as extradition in a Federal Constitution?

Chairman: That is the point, and that is what I am putting. The writ would run all over India, would it?

Mr. Zafrullah Khan: That is a position which, whether you make these subjects Federal or not, you have to face. That is the present position. There are several matters which are offences in British India and which are not offences in Indian States. If you have federation without making any of these subjects Federal, you have still to face the position that a man may do an act which is an offence in British India and then escape to an Indian State, and that that act may not be an offence there. He has to be extradited under the present rules and has to stand his trial in British India.

You need not call it extradition, but the principle will still be the same, namely, that he will be sent back to the Province where he has committed the offence.

Colonel Haksar: Perhaps it will save time if I say that the law of extradition, as administered between the States and British India to-day, provides that extradition shall take place only in respect of scheduled extraditable offences; so that, in the assumed case, if an act is an offence in an Indian State but not in British India, or is an offence in British India but not in an Indian State, you cannot ask for extradition, because if you do you will not get it.

Sir Tej Bahadur Sapru: That is so.

Mr. Zafrullah Khan: Extradition assumes that you have got to have in each Treaty or agreement a list of offences with regard to which there shall be reciprocal extradition, but whenever you have any difficulty in regard to any of these matters, either you regard it as not worth while to have extradition, and you wait until the man comes back, or he remains in exile, or you think the matter is of such importance that you should have extradition with regard to it. When that position arises, you enter one of these subjects in the list, and you have extradition.

The point I want to emphasize is that that exists under the present system, and it would not be necessitated as a new condition which had to be brought into existence, because the suggestion I make may be adopted with regard to certain things which are offences in British India and not in an Indian State or *vice versâ*. As a matter of fact that is possible even with regard to the different British Provinces. There are certain local Acts and Statutes in the different Provinces which create offences but which are not applicable throughout British India. There is not corresponding legislation on those subjects in all Provinces, and it is possible, for instance, that a man may commit an offence in the Punjab under the Pure Foods Act and may go to the next Province, where there is no such offence. In such a case you either pursue him into the next Province or wait until he comes back, because the matter is not of so much importance as to require special measures. Again, each Province has its own Gambling Acts, and the definitions adopted by the different Provinces vary, so that diversity exists at present.

I submit, however, that this difficulty with regard to the States could be got over by reserving to them the power, which in effect they exercise at present, to add to the category of offences; but they must not take away anything from what is laid down in the Penal Code. Anything the Penal Code says is an offence must be an offence throughout India; but, if local conditions justify it, an Indian State might add certain things which would be offences within that State. That is so at present; there are certain things that are offences within the States but which are not offences within British India. Or, secondly, they might provide by local legislation, as is done in the British Provinces. I have given instances—

the Pure Food Act, which creates penalties in the Punjab, and the Gambling Acts, which differ in the various Provinces. In addition, such Statutes—and, of course, that is a general category—as relate to particular communities, but which are of an all-India application might well be federalised. For instance, there is the Divorce Act, which applies to one particular community; but there could be no objection to its being federalised—that is to say, to its having operation throughout the Federal territories. Barring these categories that I have submitted, my submission would be that, in all other matters, the Provinces should have plenary powers of legislation, subject to previous consent in the case of those listed Statutes and without previous consent in other fields—because the difficulty would be this, that if one left concurrent powers of legislation both to the Federal Legislature and to the Provincial Legislatures, and a Federal Statute, in case of conflict, was to prevail over Provincial Laws and Statutes, there might be, in cases of general legislation of a wide character, hardships arising or confusion arising with regard to particular Provinces. Supposing there was a general Federal Statute relating to the law of succession in certain cases. Now, in the Punjab we have our own custom. It is not in statutory form. You cannot find custom laid down in any particular Statute or in any rules; yet custom is for a particular tribe or a particular group or a particular family the governing principle. Well, a case might arise where a Federal Statute relating to matters which are at present regulated by custom might be passed for the whole of India, and in that way so much of the custom might be abolished or repealed. Then there are various instances of Local Statutes which have been passed, designed to meet local conditions; and it would not always be possible, when passing legislation of a general and wide character at the Centre, to see in which cases conflicts might arise. Thus, eventually, a Local Statute which had been acted on for a long number of years, and which the people in the Province had been accustomed to look upon as the law of the land, might be repealed. It would therefore be very much better, to avoid conflict, to expend some time and labour in framing these two categories of the Federal field of legislation and the Provincial field of legislation.

Chairman: What about this sort of thing—I do not want to embarrass anybody—what about so-called political offences?

Mr. Zafrullah Khan: Almost all the political offences are included within the Penal Code, and I am suggesting that all those offences that are laid down in the Penal Code as offences should continue throughout the Federal territory to be offences.

Chairman: I was only thinking of an offence that might be a political offence in a Native State and not a political offence in a Province. Still, we need not trouble about that; it may be only a small point.

Mr. Zafrullah Khan: I think that point will arise, and that is the point I am dealing with. Whether you make this a Federal matter or not, that sort of difficulty is bound to follow. There must

be some power to meet those conditions that might be peculiar to a State or peculiar to a Province.

That is the submission that I have to make on this matter.

I think I may now proceed to submit my observations on the Report of the Finance sub-Committee.

With regard to paragraph 6, which deals with the extremely important question of the pre-Federation debt, I agree generally with the line that is there indicated, that is to say, that an Expert Committee, taking into consideration all the various factors that are indicated in this paragraph, and any others to which attention has not been drawn in this paragraph, should try to arrive at a conclusion as to whether any part of the pre-Federation debt of India should continue to be a debt which should be discharged, as it were, by the British Indian part and should not be a Federal debt. And I agree with regard to the principles, but there is one matter to which I want to draw particular attention.

There are several factors indicated in this paragraph, designed to show that the estimate arrived at by the Government of India would not be the correct guide in such a case; and, supposing that, after taking into consideration all those factors—for instance, taking the replacement value of certain assets and not merely their capital cost, and other things—the Expert Committee arrives at the conclusion not only that the whole of the pre-Federation debt is covered in that way, but that the Federation is taking over assets from British India which are in their value far in excess of the total amount of the pre-Federation debt. I submit that in that event there should be some resulting benefit to British India also. Just as you insist that, if any portion of the pre-Federation debt does not represent assets which are being taken over, then with regard to that portion British India shall be responsible, if you take over assets from British India which are in excess of the debt which you are taking over, then to that extent you are benefiting the Federation, and there should be some resulting benefit to British India or to British Indian Provinces. One cannot here go into details, but that is a principle which I would wish to be kept clearly in mind. This Expert Committee should not stop its work at a particular stage and say: "Oh, well, we find on general considerations that the assets which are being taken over are far in excess of the pre-Federation debt, and therefore the whole of the pre-Federation debt should be taken over by the Federation." They should go further.

Chairman: I quite agree we cannot go into details, but I want to see whether my mind is going in the same way as yours. Could you give me one concrete example?

Mr. Zafrullah Khan: For example, the Report of the Finance sub-Committee says:—

> "The Federal Authority will presumably succeed to the whole of the buildings and public works of all kinds which at present are the property of the Central Government."

When they take over all the buildings and public works, some sort of estimate of their value has to be arrived at, because, if they were not in existence, the Federation would have to build these themselves. They are taking all those over. Supposing the Expert Committee, on going into the matter, found that the value of these was 300 crores of rupees. Now the " uncovered debt " at present, apart from any other consideration, is supposed to be 172 crores. They are taking over property from British India which is worth 300 crores, which is more than double the uncovered portion of the debt. With regard to that property they would be saved the capital cost, or at any rate they are going to be saved the rent which they would otherwise have to pay if they had not got buildings of their own.

Lord Peel: That is what I called the magnificent inheritance.

Mr. Zafrullah Khan: Yes. If a man is succeeding to a magnificent inheritance, then he should at least be prepared to take over all the burdens of that inheritance without any kind of enquiry.

Colonel Haksar: Of course, this point was fully discussed in our sub-Committee. It is a highly controversial issue. I do not desire to say anything about this point now. I merely say, so far as the concrete example taken is concerned, namely, civil buildings in British India, that it was pointed out there that they have been constructed from revenue, and that the revenue utilised for the purpose of the construction of these buildings was not exclusively British Indian revenue; it was revenue to which the States were all the time contributing. I do not want to say any more; I do not want to argue about it.

Mr. Iyengar: We challenge that.

Colonel Haksar: I shall deal with it at length.

Sir Akbar Hydari: I want to ask, with regard to the figures quoted, whether they mean the actual cost of construction of these buildings or the capitalised value of the rents which the Federal Government would otherwise have to pay. For instance, if you have constructed buildings costing 300 crores, but the Federal Government comes to the conclusion that we can do with buildings only worth, say, 6 lakhs a year, then surely we should only be debited with 100 crores.

Mr. Zafrullah Khan: All these matters are matters for the Expert Committee.

Colonel Haksar: That is right.

Mr. Zafrullah Khan: With regard to paragraph 8, I merely draw attention to the general principle, to which nobody can have objection, but which I shall have occasion to refer to subsequently. The principle laid down is that there is to be an equitable apportionment of burdens, and that to this end the Federal resources should, as far as possible, be confined to revenues derived alike from the inhabitants of the Provinces and of the States. I leave that for a moment, and shall draw attention to it again.

I now pass to paragraph 11, in which the question of adjustments with regard to certain kinds of revenues is considered. The particular instance of inland Customs is referred to, and the sub-Committee say that it would not be an equitable plan in general for the Federation to attempt to buy up, so to speak, the existing rights of the States in such a matter. With regard to this, I merely wish to explain that it would not be a case of buying up at all. From the general trend of the paragraph, the sub-Committee evidently had that in view. I want to emphasise the *fact* that, whenever the question arises as to a certain tax at present imposed by any particular State being abolished or *not*—by the State of course—it must be kept in view that these kinds of taxes are imposed by the States on their own subjects for their internal revenue. When it is said they contravene certain principles of an ideal federation, the question arises that, if it is desired to abolish these in the general interests of the Federation, the State or States which levy such taxes must be compensated. As to this compensation, the position is perfectly obvious. The State levies taxes on its subjects for its own revenue. When it is asked to abolish a tax of that kind, and the tax is abolished, it would necessarily lapse to the subjects of that State from whom it was being recovered; and if compensation is asked for, the only method would be for that particular State to devise some other method of taxation which would place an equal burden, similarly distributed, upon its own subjects. In such a case there would be no reason for asking for compensation from the Federation, because the Federation could not tax all the Federal subjects in the interests of one particular State. The benefit of the abolition of such a case would go to the subjects of that State, and if there is any compensation it must come out of the pockets of those previously bearing the burden.

As to paragraph 12, I am strongly of the opinion that the recommendation contained in the last three lines should be given effect to, that the right to levy any unscheduled tax should rest with the Provinces or States, subject to the condition that the levy of the tax does not conflict with the Federal scheme of taxation.

In the next paragraph, 13, I wish to draw attention to the last two sub-paragraphs. The last sub-paragraph but one says:—

> "It will be understood that the powers of taxation enjoyed by Provincial Governments or States should be subject to the overriding consideration that they should not be exercised in such a manner as to conflict with the international obligations of the Federal Government under any Commercial Treaty or International Convention."

I have no objection to this so far as existing Commercial Treaties or International Conventions are concerned; and no one could possibly have any objection with regard to them, because they have to be implemented. With regard to the future, however, I have a suggestion to make which, though not strictly relevent to the question of finance, is bound up with it in this way, that otherwise it would be difficult to assent to this suggestion. My suggestion is

that, in future, this restriction should apply to the Provinces only if these international obligations and Commercial Treaties or International Conventions are concluded by the Federal Government with the consent or approval, or at least acquiescence, of—if not all the Federal Units—at least a certain proportion of them; for instance, three-fourths. Otherwise it would be possible for the Federal Government to go on entering into these International Conventions if it found that it did not affect its own revenues and would only affect the revenues of the Provinces and of the States. If this restriction over the powers of taxation enjoyed by Provincial Governments and States is to be maintained, their consent in regard to entering into these international obligations must also be obtained.

The last sub-paragraph reads:—

> "No form of taxation should, we think, be levied by any Unit of the Federation on the property of the Federal Government."

My submission with regard to that is that it obviously should not apply to municipal taxation; for instance, water rates on buildings owned by the Federation, or to other taxes which are mostly in the nature of charges for services rendered. Even with regard to Provincial taxation, where a tax is a charge for service rendered there should be no restriction upon it.

Chairman: Would you regard the property as a sort of enclave?

Mr. Zafrullah Khan: What I am contemplating is a tax, so far as the Provinces are concerned, like the special Motor Tax which is in existence in the Punjab, for instance. That is levied for the purpose of the maintenance of Provincial communications, and every vehicle which uses the Provincial communications is liable to pay that tax. If motor cars and lorries and so on, which belong to the Federal Government, use the Provincial roads, to which no contribution is being made by the Federal Government, that kind of tax should not be restricted under that provision.

Sir Akbar Hydari: We had that in view, and it is in view of that that this last sentence was added. We had in view the question of municipal taxation, and so this last sentence was added which says:—

> "The precise form in which this principle should be expressed should be examined by the Expert Committee."

Mr. Zafrullah Khan: I am very glad to hear that from Sir Akbar, and it is only because there is that sentence, and because that examination is going to take place, that I am now putting my suggestion on record so that it may be considered by the Expert Committee.

Sir Provash Chunder Mitter: Does Mr. Zafrullah Khan mean that, for example, transit duties on a purely Provincial road would be a matter for examination by the Expert Committee; but that, if there is a road from one Province to another, or a light railway, the Expert Committee would deal with it differently?

Mr. Zafrullah Khan: Well, transit duties are expressly forbidden by the Committee, and I have raised no objection to that.

Mr. Jayakar: You are speaking of taxes on the property of the Federation. The case which has been suggested would not fall into that category. You are speaking of property of the Federal Government situated within the limits of Provincial territories. The question would not arise in that case.

Mr. Zafrullah Khan: Paragraph 14 deals with Grants to Constituent Units. The first sub-paragraph contemplates a case of grants both to Provinces and to States. The last sub-paragraph says that:—

> " The reverse process should also be possible. Any Province, with the assent of its Legislature, should be free to make a grant for any purpose to the Federal Government."

Well, I apprehend that the words " any State " are omitted for this reason, that the States being sovereign States are at liberty to give away anything if they want to do it. If that is the reason for the omission, I have nothing further to add.

Lord Peel: That is right.

Mr. Zafrullah Khan: Then paragraph 15 deals with Taxes on Income, and at the top of page 9 raises the question that the distribution of the proceeds of Income-tax among the Provinces—

> " may also form a very convenient means of alleviating the burden of two or three of the Provinces which, under the present system, are universally admitted to be poorer than the others."

I think this is a principle to which, without very great further consideration, I would not be willing to give my consent. That sounds very much like taxing one Province, and handing over the proceeds to another. That is a principle which, on the face of it, would be indefensible.

Sir Maneckji Dadabhoy: May I ask a question? If it is to be a Federal form of Government, why do you draw that distinction? Why do you say that, one Province being poor, the revenues of another Province should not go to the assistance of it?

Mr. Zafrullah Khan: It is exactly because it is going to be a Federal Government that I do draw that distinction. If everything were to come into a pool, and everybody was to share according to their needs, and so on, it would not be a Federal Government; it would be a unitary Government looking after the whole country impartially—it does not matter where it gets its revenue or where it spends it. It is because it is going to be a Federal Government, in which primarily, subject to overwhelming considerations, each Province must raise its own funds, that I am saying that this is a principle to which you cannot give consent.

Lord Peel: Would you go to the other side, and make it incumbent on the Federal Government to hand back to the particular

Province the Income-tax raised in that particular Province, irrespective of whether the Income-tax was earned in that Province or not?

Mr. Zafrullah Khan: Well, generally I would accept that principle.

Mr. Iyengar: No, no; it would certainly be very dangerous.

Mr. Zafrullah Khan: But the principle could be deviated from to this extent, that the payment back of the Income-tax may be made on other considerations which relate only to the real source from which the tax is derived, and not on considerations such as that, because a certain Province has not got enough Provincial resources and another has, that Province does not compare favourably with another Province. I do not want to raise a controversy between different Provinces; but, for instance, supposing on behalf of Bengal it were urged that, owing to the permanent settlement, their proceeds from Land revenue are not so large as in other Provinces where there is no permanent settlement. That is not a ground on which Bengal should ask for relief or an extra allotment from the Federal Government.

Sir Maneckjee Dadabhoy: Then in what way would you give relief?

Mr. Zafrullah Khan: In such a case a Province has got to cut down its expenditure. The way in which such a case would be dealt with is this. In the general adjustment of sources of Provincial and Federal revenue, in allotting the sources you can allot them in such a fashion that you could equalise the Provinces, as it were. If one Province gets something more from one Provincial source, another Province could get more from another Provincial source. Otherwise, you would have to agree to the general principle that, if certain Provinces with slender Provincial resources continue to spend on the same scale as Provinces which have bigger Provincial resources, you have to supplement their expenditure from the Centre. If you were to go on in that way I do not know where it would lead you to. It would be putting a premium on extravagance. A Province might spend money very heavily on perfectly legitimate subjects such as nation-building, sanitary, public health services, and so on; and in that way they might habitually exceed their Provincial Budget. Then they would make a claim in regard to these things on the ground that they have not wasted their money but had spent it properly.

Lord Peel: I do not think that is a fair definition of a poor Province—that it expends a good deal of money. It may be extravagant, but I think it is a question of the resources it has got and not of what it spends.

Mr. Zafrullah Khan: Of course there may be exceptions. In some cases there may be overwhelming considerations, and it may not be possible to help a Province in any other way; but I am talking of general principles.

Then in the next sub-paragraph, dealing with Income-tax, the sub-Committee have recommended a departure from the general rule that the party to collect a tax should be the party who is going to receive the proceeds thereof. The sub-Committee say:—

> "But the difficulty might be met, at all events partially, if the Federal Finance Minister, before introducing any proposal to vary the Income-tax rate, were required to consult Provincial Finance Ministers."

If this consultation is to have no more weight than the opinion of assessors in a Sessions Trial in India (which does not bind the Judge in any way at all), I do not see that much would be gained. The tax being primarily a tax the proceeds of which have to return back to the Provinces, I think, before the rate is varied by the Federal Finance Minister, it should be made obligatory upon him to obtain the consent of a certain percentage of the Provincial Finance Ministers to his proposals before the assessment could be brought into existence—say three-fourths of the Provincial Finance Ministers.

In the last sub-paragraph of paragraph 15, the sub-Committee say that Provinces, if they so desire, may be empowered to raise, or appropriate the proceeds of, a tax on agricultural incomes. So far as empowering a Province is concerned, I have no objection to it; but one matter should be kept in mind, that some Provinces have to a very large extent got that power already—that is to say, Provinces where the permanent settlement does not operate. They have, under their various Provincial Land Revenue Acts, the power at recurring settlements to raise the rate of Land revenue, and that is a tax on agricultural incomes which is liable to an increase or decrease having regard to various factors. I think this power should ordinarily be considered sufficient in those Provinces.

Paragraphs 16 and 17 deal with Provincial Contributions and States' Contributions. Paragraph 16 says that, having regard to the recommendation of the sub-Committee that the proceeds of Income-tax, apart from Corporation tax, should be paid back to the Provinces, whatever may be the principle on which the payment back is to be made, if as a result there is a deficit in Federal revenues, that should be made up by contributions from the Provinces, divided bewteen them either on the basis of their respective revenues or of population or according to some other defined method. This is a matter with regard to which I would draw attention to the general principle laid down in paragraph 8, *that* to Federal revenues British Provinces and Indian States—that is to say all the Units of the Federation—have to contribute equally. You start the Federation without the Income-tax; that is not to form a head of Federal revenue. Then you find that Federal taxes and Federal sources of revenue do not bring you in enough to meet all Federal charges. I really have not been able to understand why it should be obligatory, in the first instance, upon the Provinces to make up that deficiency. Income-tax is not being levied in the States at all. If there is a deficit in the Federal revenues why

should the Provinces be asked, in the first instance, to make it up to the extent to which they are benefiting from Income-tax? Income-tax, I am aware, is a Central tax at present, and all the Provinces contribute at the same rate. I cannot understand the principle that, in future, the Provinces alone should, in the first instance, contribute towards a deficiency in the Federal receipts. I maintain that all Units must contribute on an equal basis.

Paragraph 18 deals with cash contributions made by certain States towards Central revenues. I agree with the general principle that there is, generally speaking, no place for contributions of a feudal nature under the new Federal Constitution. But before any of the other recommendations are carried out, I think the enquiry suggested in this paragraph should be completed. Wherever it is found that the sum being paid is only a due of a feudal nature, I would have no objection to its abolition, whether gradual or immediate as circumstances may decide. But if the Expert Committee were to find that certain contributions by certain States were not feudal at all, but in the nature of payment for services rendered, then the payment would not be a mark of feudal inferiority; it would be on the basis of contract. It would mean payment for certain things done or received, in respect to which the State, instead of paying a lump sum, is paying a certain sum each year. Therefore in such a case there would be no ground for its abolition on the argument that a feudal due was being levied.

I come now to paragraph 20. With regard to the first sub-paragraph, I hope the Maritime States who come into the Federation will be persuaded that the administration of Customs at their Ports should be taken over by the Federal Department. I am not suggesting anything with regard to allocation and distribution, but only with regard to the collection and administration at the Ports. It would make for uniformity and the elimination of confusion if this were done. The only question which would arise would be the distribution of patronage with regard to the people employed, and that could be easily adjusted as between the Federation and the particular State concerned.

With regard to the last part of the second paragraph, at the bottom of page 10 and the top of page 11, in the absence of the findings of the Expert Committee there suggested, I would not be prepared to express any definite opinion on this particular point. The situation is a very complex one with regard to certain Maritime States and interior States and so on, and it is difficult to say what would be an equitable principle. It would be possible to express an opinion only when the data have been collected and the Expert Committee has made its Report. I do not suggest, however, that, unless that is done, we cannot go forward. This is a detail which can be dealt with later.

Paragraph 21 deals with the Emergency Powers of the Federal Government, and says:—

> "In order to ensure that the Federation is not left resourceless in a grave emergency, and also to secure the object

> referred to in the next paragraph, we regard it as important that there should be an emergency power in the Federal Government, with the approval of the Federal Legislature, to call for contributions from all the Units of the Federation on some principle of allocation to be based on examination by the Expert Committee."

Now, that paragraph would seem to suggest that it is only necessary for the Federal Executive, with the consent of the Federal Legislature, to declare that a state of emergency exists, for each Province to have to contribute so much on a certain principle. I think that power should not be left at that stage alone, namely, that whenever the Federal Executive chooses, with the consent of its Legislature, to declare a state of emergency, it would be entitled to levy a contribution. It should be subject to the restriction that there should be some sort of certification of a state of emergency by the Governor-General as such, or that there should be some concurrence by the Units, or by a certain number of the Units, that a state of emergency exists, before the Federal Executive and its Legislature would have the power to call for contributions from the Federal Units. Otherwise, a division of the field of taxation between the Units and the Federation would become purely illusory.

Mr. Sastri: But will not the very nature of the emergency preclude the consultation which would thus be necessary between the Federal Government and the numerous federating Units?

Sir Maneckjee Dadabhoy: Do not you think that the control of the Federal Legislature is sufficient?

Mr. Zafrullah Khan: No, I do not, and that is the reason why I make this proposal.

Mr. Iyengar: That goes to the root of the matter; that is the whole point.

Mr. Zafrullah Khan: With regard to the borrowing powers, which are dealt with under paragraph 22, in the third sub-paragraph of that paragraph it is suggested that:—

> "In order to secure that loans are raised at the cheapest rates, it is desirable that the security should be as wide as possible; and we therefore suggest that, in the interests both of the Federation and of the Units, all loans raised by the Federal Authority should, in the future, like those of the Government of India in the past, be secured not only on the revenues of the Federation but also on the revenues of the Provinces of British India."

Now, that applies both to loans that are raised for Federal purposes and to loans the object of which may be merely, after raising the loan by the Federal Government, to let a particular Province or certain Provinces have the benefit of it. In the latter case I would have no objection to the principle; but I do not know whether, with regard to each loan, it would be possible to decide that it was wanted for a particular Province. I have the strongest

objection, however, to the revenues of the Provinces being used as a security in future for Federal loans, unless the revenues of the States as well are, in the future, made security. As I have emphasised so often in this Committee, there is going to be one Federal Legislature in which British India and the States will be sitting, and one Federal Executive. A loan will be decided on by the Federal Executive and according to the policy of the Federal Legislature, to which both the Indian States and British India have contributed, and for which both are responsible. That being so, if a loan is to be raised and it is desired to give as security something more than the revenues of the Federal Government alone, there is no reason why the revenues of all the Units should not be made security. If, however, for some reason, the revenues of the States cannot be so used, then the revenues of the Provinces should equally not be made available as security for these loans. In the case of the Provinces, this right which the Federal Government has to levy contributions in case of an emergency should be sufficient security. You have the Federal resources and are able to levy contributions from all the Units in cases of emergency; and the creditors should consider that that is sufficient with regard to the future.

With regard to paragraph 25, I have only one remark to offer, and it is this. In view of the recommendation with regard to the Railways, at least that in future they should keep their own profits, and should work on a basis which, in the long run, would yield neither profit nor loss, it is a matter worth considering—I am not at present putting it forward—whether, subject to a Statutory Railway Authority being established for the control and co-ordination of Railways, and so on, it would not be possible, so far as the actual running and the ownership of the Railways was concerned, to put it on a Provincial and a State basis instead of continuing it on a Federal basis. But that is a large subject, and I do not want to discuss it at the present moment.

That, My Lord, is all I have to say.

Mr. Benthall: Lord Chancellor, I have only two or three points to make. The first one concerns the principles of the division of the revenue between the Federation and the federating Units, with particular reference to paragraph 4 of the Report. It is a matter of common agreement, I think, that the working of dyarchy in the Provinces failed owing to the starvation of finance in the Provinces. Apart from the other defects of dyarchy, Ministers never have a chance owing to the lack of funds, entirely due to the bad financial start that was made ten years ago. Now, if the new autonomous Provinces are to have a chance of establishing themselves they must have all the resources which can be given to them. To do otherwise is to risk certain failure. At the same time, the Report rightly points out that, if the Federal Government who, in time of emergency or crisis, will have to sustain the credit of the whole constitution, has not got sufficient resources, there is an equal danger there. I am as anxious as Lord Peel that the Federal

Government shall have ample resources, but I do particularly want to stress the necessity of not starving the Provinces at the commencement of this new constitution. That being so, the principle which in my opinion should underlie the instructions given to the expert body should be, that the initial allocation of revenues should be drawn up to give to the Federal Government sufficient for its normal requirements only, as far as can be foreseen at the date of the coming in of the constitution, relying for future development of Federal finance upon the natural expansion of revenue and the careful control of expenditure.

Lord Peel: It might be the other way, because you might have more protection in India, and therefore less revenue from the Customs.

Mr. Benthall: Yes, but that is a matter of the allocation of the heads, I think.

Lord Peel: Well, it might be.

Mr. Benthall: But I would draw a distinction between the normal and the emergency powers.

Turning to Section 10 of the Report, the emergency powers would be required to meet conditions such as a war or a financial crisis. If we look at the taxes scheduled in paragraph 10 and take them in detail it must be admitted that they are not very adequate for immediate recourse in the event of a crisis. Customs are probably already too high, and are probably now already subject to the law of diminishing returns. I understand that it is contemplated that deficiencies of Customs may be made up by Excise duties in future; but the point is that, in an emergency, it seems extremely unlikely that we can expect any increase, especially at short notice, from Customs. The next source is Salt Tax. I will say no more about that. The other sources of revenue are equally not open to very sudden expansion; but I would like in particular to refer to the question of Railways. I myself, and the people whom I represent, are very insistent that the Railways should be run as a commercial undertaking and on the basis eventually that they should yield neither profit nor loss. It is not clear in this Report, and I think it should be made quite clear, that the Federal Government should have the emergency power of levying a surcharge on Railway rates, which I believe is a most valuable asset in times of emergency. And similarly, if Posts and Telegraphs are made into a commercial undertaking, I think the Federal Government should still reserve similar powers to surcharge on Postal and Telegraphic rates.

There remain, of course, the emergency powers of the Federal Government as referred to in Section 21 of the Report. Now, Mr. Zafrullah Khan made the point that he did not think that the Federal Government should exercise those powers without the concurrence of the Units of federation. It seems to me that it would be impossible in an emergency for the Units of federation to be consulted; but the whole problem seems to me to be wrapped up in

the question of properly constructing your Federal Government. If the Federal Legislatures are properly representative of the Units, that problem should vanish.

I think it is agreed by all that Income-tax should be a Provincial subject, because the States take no part, because it is a "direct" tax, by common agreement a proper Provincial source, and should be raised by the party which enjoys the benefit. But I think it is not out of place to stress the Income-tax payers' point of view. Formerly administration was not centralised, and in those days I believe the position was chaotic. And then, too, Income-tax was very low. To-day Income-tax rates are higher; the burden is heavier, and it is from the Income-tax payers' viewpoint most essential that there should be uniformity of administration and of the rate. I do not think that administration will present any particular difficulty, however it is centralised. But as regards uniformity of rate, I must confess that I can add no more to the Report than what is already written. I and my colleagues have discussed this question at great length, but I am afraid we have not devised any scheme to reconcile a satisfactory provincialisation of the Income-tax with the necessity of uniformity of rate.

I should like to ask whether the sub-Committee contemplated that the Expert Committee would take public evidence in India, as we might later on desire to give more evidence. The question did arise whether the body should sit in India.

Sir Maneckjee Dadabhoy: Certainly India; and both in the States and Provinces.

Mr. Benthall: With regard to the three species of taxes, the Corporation Tax, the Terminal Tax and the Export duties, we consider that all these are bad taxes. They are taxes on industry and on commerce and definitely handicap trade. We recognise that it is impossible at present to do without these; but we should like to have it put on record that the principle of these taxes is wrong. I admit that that is a pious hope, but it is parallel with the case of the States' Customs, and it is a pity to have it on record that the sub-Committee approved of them in principle. With regard to the Export duties, they are in principle a bad tax, but they might possibly be justified in the case of a monopoly. I am going to support Sir Provash in one thing he said. I am convinced that you will never get a good start with the constitution unless the Provinces are satisfied with the financial settlement. I do not support the illustration which Sir Provash gave us from the constitution of the United States.

Sir Tej Bahadur Sapru: It is not open to the States to levy taxation.

Mr. Benthall: But I do think that the Expert Committee might be asked to consider whether it is not possible to provide that, where an Export duty is placed on a commodity which is a monopoly of one Province or of a few Provinces, provision should

be made for that Province or those Provinces to participate directly in that Export duty.

The last point I have to make is in connection with the Federal Loans Council, referred to in Section 22. In my opinion, this Council must be advisory only. The loans must be raised by the Federal Government, as, apart from the difficulty of such a body as is contemplated pledging the revenues, the Council, to be representative of the States and the Provinces, must be one of about twenty persons, and such a large body would not be efficient for the purpose. Such a body, however, would be most suitable for deciding the amounts to be raised in loans and the allotment of the loans when raised; but there is a second function of a Loans Board, which is, I think, performed by that in Australia, and that is to raise the money. I am not going into that further at this stage, but will content myself with saying that I doubt whether a body constituted as contemplated in paragraph 22 would fulfil the second function of a Loans Board, that is, of carrying the confidence of the markets where the money is to be raised. I suggest, therefore, that that second function of a Loans Council should have further examination from that point of view.

(The Committee adjourned at 4-15 p.m.)

PROCEEDINGS OF THE THIRTY-FOURTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 14TH OCTOBER, 1931, AT 11-0 A.M.

HEAD 4.

Distribution of Financial Resources between the Federation and its Units.

DISCUSSION ON THE REPORT OF THE FEDERAL FINANCE SUB-COMMITTEE—(*continued*).

Chairman: Your Highnesses and Gentlemen, Before we begin, Mr. Zafrullah Khan has asked me to read this as an addition to his speech. He says:—

> "With reference to paragraph 22 of the Finance sub-Committee's Report, I desire to add to what I said yesterday, that the control which the sub-Committee wish to give to the Federal Government over the time at which the Provinces should issue their loans should apply, in the interests of all Units as well as the Federation, equally to loans issued by the States."

Sir Tej Bahadur Sapru: My Lord Chancellor, I am fully conscious of my own limitations, and therefore I do not propose to discuss the technical side of the question which is under consideration. I would, therefore, confine myself to some of the aspects of

the question as they came out prominently yesterday in the course of the discussion; and, as I proceed further, I shall make an appeal from Sir Akbar Hydari, the member of the Federal Structure Committee, to Sir Akbar Hydari, the member of the Federal Finance sub-Committee.

At the present moment, all that we are concerned with is the question of the principles which should be adopted in settling the financial relations between the Federal Government and the different Units, including the Indian States. It seems to me that the Report which has been sent to us by the Federal Finance sub-Committee—and I speak with the greatest possible respect—is so good, so excellent, that there must be some sort of an explanation forthcoming as to why this particular attitude was adopted yesterday by Sir Akbar Hydari.

Mr. Sastri: It was endorsed by the Chancellor of the Chamber of Princes.

Sir Tej Bahadur Sapru: I said just now that we must, at this stage of our work, address ourselves rather to the question of principles than to the question of details; and, if you look into this Report, you will find that in nearly every paragraph there is some principle sated, more or less accepted by both parties, with some details left out for the Expert Committee which they had in view.

I will begin with paragraph 4, which deals with the Conditions of the Problem. At the end of paragraph 4, on page 4 of the Report, you have these two principles most clearly stated by the sub-Commitee. One is:—

> "Bearing the above in mind, we have started from the standpoint—
>
> (1) that it is undesirable to disturb the existing distribution of resources between the various governments in India, unless, as we have found in some cases, there are imperative reasons for making a change;
>
> (2) that, at all events to begin with, the Federation and its constituent Units are likely to require all their present resources (and, indeed, to need fresh sources of revenue); so that, on the whole, it is improbable that any considerable head of revenue could be surrendered initially by any of the governments without the acquisition of alternative resources."

So far as these two principles are concerned, I would respectfully say, on my own behalf, that I am entirely in agreement with them. I have no fault to find with them; and indeed it seems to me that, although they have no reference to precedents and parallels, they proceed more or less on the same lines upon which certain other constitutions did proceed when different units of the country decided to form themselves into a federal government. This was more or less done in Australia, and I believe in other constitutions you will find also that they did make a provision for a period of

transition, and they started with their existing sources of revenue without causing any great disturbance to the financial system existing at that time.

Similarly, when we come to deal with pre-Federation debt, as set out on page 5, we find this principle laid down:—

> "It therefore seems to us that, if it were found after investigation by the Expert Committee, that all the obligations were covered by assets"—

and I would take in here the point made by Sir Purshotamdas Thakurdas yesterday, "taking it in its wider sense"—

> "the whole of the pre-Federation debt should be taken over by the Federation. While, however, this seems to us to be the probable result of a close investigation, we do not rule out the possibility of a finding by that Committee that a certain proportion of the pre-Federation debt should equitably be classified in the first instance as 'Central'; that is to say, that its service (including a due proportion of sinking fund charges) should be taken to be a 'Central' and not a Federal charge."

Now, that principle, together with the reservation, is also acceptable to most of us.

Then we come to other clauses in the Report. For instance, in paragraph 8 the sub-Committee deals with the question of the allocation of resources between the Federation and its constituent Units. and there they again lay down certain principles:—

> "It is obvious that, if there is to be an equitable apportionment of burdens and smooth working of the constitutional machine, the Federal resources should, as far as possible, be confined to revenues derived alike from the inhabitants of the Provinces and of the States, and which can be raised either without any action on the part of the individual States or by an agreement with them of simple character, readily enforceable. This principle implies, very roughly, that the Federal sources of revenue should be confined to 'indirect' taxes."

This is a principle which has been more or less followed in many of the federal constitutions. The Report goes on:—

> "If, however, a 'direct' tax could be found which complied with the above conditions, it would be highly desirable to include this among the Federal resources, for the following reasons."

I will not read that.

Then again, there was agreement with regard to Corporation tax, and in paragraph 9 it is stated:—

> "The most obvious 'direct' Federal tax is Income-tax. We think that it would be desirable, if it were possible, that some of the Income-tax receipts in all the Units of the

> Federation should, in case of necessity, be available as a Federal resource; but we recognise that this is, in general, a development which must be left to the future and depend on free negotiation between the Federal Government and the federating States subsequent to federation."

It will be noticed that the authors of this Report do not bind down the various Units to any hard and fast rule at the present moment. The rule as laid down here, is sufficiently elastic to be able to answer the needs of the future as occasion may require.

Then, in paragraph 10, you have Classification of Revenues, and in that classification I would particularly invite your attention to some of the big items. External Customs, including Export duties, is the first item; and then you have Salt; Export Opium; Excises on articles on which Customs duties are imposed (with the exception of Excises on Alcohol, Narcotics and Drugs); Receipts from Federal Railways, Federal Posts and Telegraphs, and other Federal commercial undertakings; Profits of Federal Currency; Corporation tax (subject to paragraph 9); Contributions from Provinces; and Contributions from States. Then they go on to refer to the Provincial Revenues.

I will not go through the entire Report paragraph by paragraph, but I will take up one or two important paragraphs just to show that there are certain important principles which have been settled and agreed to. Take, for example, paragraph 14, which deals with the important question of Grants to Constituent Units. I will just read out two or three lines from that paragraph. It says:—

> " It seems important that the constitution should, in one respect, be less rigid than the existing one, under which it has been authoritatively held that there is no power to devote Central resources to the Provinces or Provincial resources to the Centre. It should, we think, be open to the Federal Government, with the assent of the Federal Legislature, not only to make grants to Provinces or States for specified purposes, but also, in the event of its ultimately finding that Federal revenues yield an apparently permanent surplus, to be free, as a possible alternative to reduction of taxation, to allocate the surplus proceeds to the constituent Units of the Federation, both States and British Indian Provinces."

Now, I will only remind the Committee that this power to allocate the surplus proceeds to the constituent Units of the Federation is a very orthodox rule which has been adopted in various constitutions, including that of Australia.

Similarly, when you come to paragraph 15, you find their view with regard to taxes on Income.

The paragraph in question runs as follows:—

> " We are agreed that such taxes should *still be collected* from the whole of British India by one *centralised adminis-*

trative service. Most of us are also of the opinion that uniformity of rate should be maintained, since variations of rate may lead to unfortunate economic consequences, such as discrimination between industries in different Provinces. Some of us take the opposite view, both because of the constitutional difficulty mentioned below and because of the difficulty of securing uniformity in all Units. The subject is clearly one to which the Expert Committee should devote much attention."

Now comes the agreement:—

"In any case, we are all of the opinion that the net proceeds should, subject to the special provisions mentioned below, be re-distributed to the Provinces. On any other basis it will be impossible to secure, even ultimately, a uniformity of Federal burdens as between the Provinces and the federating States, or to avoid a clash of conflicting interests in the Federal Legislature when there is a question of raising or lowering the level of taxation."

Now, later on, the sub-Committee say:—

"The distribution of the proceeds of Income-tax among the Provinces (even though there may initially be countervailing Contributions to the Federal Government, as proposed in the next paragraph) may also form a very convenient means of alleviating the burden of two or three of the Provinces which, under the present system, are universally admitted to be poorer than the others."

I would not like the Committee to entangle itself in the controversy as to the criteria by which we are to judge of the poverty of a Province or not. That is a matter of common knowledge, and we all know which Province require more help than the others: but the principle laid down in this particular paragraph is by no means unknown to other federal constitutions, and I am only pointing out that they have followed the orthodox line there.

Then we come to paragraph 16:—

"We have, subject to certain reservations, proposed the allocation to the Provinces of the proceeds of taxes on Income, without, so far, any corresponding reinforcement for the Federal Government. If the Expert Committee unexpectedly found that Federal resources were such as to give a secure prospect of recurring revenues sufficient to meet this loss immediately (and also a loss in respect of the heads dealt with in paragraph 17 below), many difficulties would, of course, be removed. But on the provisional basis set out in paragraph 4, we are bound to assume that there may be a substantial Federal deficit, due to the allocation of Income-tax to the Provinces. The deficit, in so far as it arises from the above cause, should, we suggest, be met by Contributions from the Provinces, to be divided between them either on

the basis of their respective revenues or of population, or according to some other defined method."

That is a question of great importance, no doubt; but it is a question of detail which I think would come properly within the sphere of experts.

"The Expert Committee should consider what is the most appropriate basis. This basis need not necessarily be the same as that on which the Income-tax proceeds are distributed."

There, again, the rule laid down is sufficiently elastic.

Then we come to paragraph 17, which is of great importance from the point of view of the Indian States.

"In the scheme proposed above, the Federal burdens will be spread over all the Units of the Federation in a precisely similar manner except for—

(*a*) The above-mentioned Contributions from the Provinces, until such time as they are finally abolished;

(*b*) such direct or indirect contributions as are, or have been, made by certain States, of a kind which have no counterpart in British India; and

(*c*) varying measures of immunity in respect of Customs and Salt enjoyed by certain States."

I will not enter into the thorny question of States' contributions, beyond saying that I very strongly hold that, in the case of a federal constitution, there is absolutely no place for the payment of any tributes. We will have to find a different name for any contribution which may have to be made by an Indian State as a matter of agreement and not as a matter of compulsion.

Paragraph 18 deals with the case of cash contributions from States and ceded territories. It is a question in which I understand the Indian States are vitally interested. I will particularly invite the attention of my friends from the Indian States to some of the recommendation of this Committee.

"The direct or indirect contributions from the States just referred to may arise, or are alleged to arise, under the following heads:—

(i) cash contributions;

(ii) value of ceded territories; and

(iii) contributions in kind for Defence by the maintenance of State Forces.

(i) Cash contributions from States (till recently known as tributes) have arisen in many different ways, and it has been impossible for us to examine the cases of individual States. Nevertheless"—

and this is the principle which the Committee lay down—

"we think that there is, generally speaking, no place for contributions of a feudal nature under the new Federal

> Constitution; and only the probability of a lack of Federal resources at the outset prevents our recommending their immediate abolition. We definitely propose that they should be wiped out *pari passu* with the Provincial Contributions discussed in paragraph 16 above."

I have already said that, in my opinion, there is no place for tributes in a federal constitution. If contributions have got to be continued, even though it may be for a limited period, it must be a matter of agreement. It must be distinctly understood that it is of a temporary character, in order to tide over some financial crisis which may exist for the next few years.

I will not deal with paragraphs 19 and 20 now, which deal with the question of the State Forces, the Maritime States and Kashmir.

Then I come to paragraph 21, which deals with the emergency powers of the Federal Government. Now, here what is stated is:—

> "In order to ensure that the Federation is not left resourceless in a grave emergency, and also to secure the object referred to in the next paragraph, we regard it as important that there should be an emergency power in the Federal Government, with the approval of the Federal Legislature, to call for contributions from all the Units of the Federation on some principle of allocation to be based on examination by the Expert Committee."

Now, here I would point out that the principle laid down is qualified by the use of the words "grave emergency." It would not be open to the Federal Government to call upon an Indian State, merely because there was a deficit in the Budget, to make a contribution. The necessary condition is that it must be a grave emergency, and that that power must be exercised by the Federal Government—and it is hardly necessary for me to point out that the Federal Government will not be an outside body, in which the Indian States will have no part or lot; it will be as much a Government of theirs as it will be a Government of ours.

I will not deal at length with paragraph 22, which deals with the question of the Borrowing Powers of the Units and the Security of Post-Federation Debt; but I would only invite attention to a question of principle which is laid down in the last two lines of that paragraph; and I submit again that that is a very sound principle:—

> "We are of the opinion that there should be no power in the Units to borrow externally without the consent of the Federal Government."

That is obviously for the reason that the external investor or lender must look to the Federation, and can only advance money on the credit or the security that may be offered by the Federation as a whole. Therefore I will say that a good many principles have been laid down and have been agreed to. The working out of these principles has been left to the Expert Committee.

Now, when I come to the question of the Expert Committee, which is dealt with in paragraph 4, there are just one or two questions which occur to me. I have been reading the Proceedings of the Federal Finance sub-Committee, and I do not find—it may be that I have overlooked any particular passage or any particular part of the proceedings, but I do say that I do not find—that the question of the character and composition of this Expert Committee was specifically considered or debated there. Therefore, it came to me really as a surprise yesterday when it was suggested by some gentleman in this Committee, that this Expert Committee shall be a Committee purely of experts. Secondly it came to me as a matter of surprise when it was suggested that this Expert Committee would submit its Report to His Majesty's Government. Thirdly, it came to me as a surprise when it was seriously contended that the decision of His Majesty's Government will be imposed upon the Federation. My conception of federation is that it is a matter of contract between the federating units. You and we must arrive at some definite agreement, and that agreement must be embodied in our constitution and must be endorsed by the Federal Legislature, which will be as much your Legislature as ours; and ultimately it must be endorsed by the Federal Government, which will be, again, as much your Government as our Government.

Now, Sir Akbar Hydari, yesterday, in the course of the debate, made one very significant remark; and, lest I do him injustice, I shall read what he himself said. At pages 35 and 36 of yesterday's proceedings, Sir Akbar Hydari is reported to have said this:—

> "They will have to be endorsed by the different federating Units, not by the Federal Government. What we hold is that this is one of the conditions precedent to the federating Unit's determining whether it will federate or not."

At this point Mr. Jayakar intervened and said:—

> "I do not quite understand the point raised by Sir Akbar. He said he was expressing not only his own view, but that of the States Delegation. Is it his view that there is going to be no Federation until this Expert Committee has been appointed, has made its Report and submitted it to the Units, and they have agreed to it?

To that Sir Akbar Hydari replied:—

> "That is the position so far as the Indian States are concerned."

Sir Akbar Hydari: Would you read what I said on page 38? That is clearly what I meant.

Sir Tej Bahadur Sapru: I will certainly do so. Sir Akbar spoke as follows:—

> "I should like to make it clear that it is perfectly open for this Committee to meet and make its Report; and it is perfectly possible to frame your Federal Constitution, which you have decided will be presented to the federating Units,

so far as the Indian States are concerned, for each of them to take or to leave, on the basis of the Report."

Sir Akbar Hydari: Please read on.

Sir Tej Bahadur Sapru: Sir Akbar continued as follows:—

> "Before a State comes in, it must have some sort of picture of the situation and definite proposals of some sort to show what are the financial implications of its entering the Federation. That is all that I say. It is perfectly possible for you to construct your Federal finance proposals in any way you like, and it will be perfectly open to us to come into the Federation or not. You will have to balance the advantages and disadvantages of our States coming in or not according to the way you construct your picture."

The fact of the matter is this, and I say it with all humility, that the position taken by Sir Akbar was not quite consistent with the position taken by the Indian States Delegation. I appeal from Sir Akbar of yesterday to Sir Akbar of ten days ago. Now may I read from Sir Akbar's speech in the Federal Finance sub-Committee on September 30th, 1931. It will be found at page 157 (*a*) in the report of that day. He said, in the course of the debate on the question of ceded territory and things of that kind, with which the Federal Finance sub-Committee was engaged:—

> "I think that we want to say this much, that assuming that the conditions that we evolve in the Federal Structure Committee constitutionally are such that an all-India Federation is brought about (and that is the hope for which I am working), then I take it that our present object here is to ascertain how we could, from the financial side, approach the financial problems involved in federation in such a way as to make federation practically possible."

Now comes a very important sentence:—

> "I for my part can see only one way, and that is to start the Federation immediately, if we are going to have it and not wait for a very long time; to start it with the figures and the facts as they stand at present, both with regard to receipts and with regard to expenditure. In other words, take the expenditure with regard to the Indian State Forces—take it as for the present continuing to be borne by the Indian States without asking any *quid pro quo* from the Federation as a whole; take the surplus of ceded territories—whether there is a surplus or not. All that I would keep apart; take facts as they are."

Now, with every word and with every syllable of that statement I am in complete agreement; but, while I am prepared to support the position taken up by Sir Akbar Hydari on the 30th September, 1931, I find it difficult to reconcile his speech of that date with the statement which he made yesterday.

I should like to quote another remarkable sentence from his speech of the 30th September, which appears on page 159. After dealing with various objections, Sir Akbar Hydari delivered himself as follows:—

> "All these adjustments and enquiries are so detailed that they would require an immense amount of calculation and investigation; and if we are going to wait until they are completed and start even in the States on a parity of conditions, we shall have to wait almost until the Greek Kalends. Therefore, let us start with things as they are, and then take up your enquiry, and in the enquiry try and see how far the claim of each State is a plus claim (it is just possible that it might be a minus claim) in view of various burdens which they bear and should not bear."

Then Colonel Haksar interposed and said:—

> "There will be no minus claim in the Federation."

Sir Akbar Hydari then continued and said:—

> "I, for one, would be quite satisfied if there were no such investigations, so far as my State is concerned, but that is perhaps on account of a variety of circumstances."

I will leave the references to his own State; but he goes on to say:—

> "I think that, with regard to all these claims that have been made, all that is required is to let the claims which are conceded be placed on the same footing and brought about and adjusted according to some principle that may be agreed to by all. Do not allow the investigation of these claims and the determination of them to delay federation."

That is very significant. I respectfully beg to express my wholehearted concurrence with these sentiments which Sir Akbar Hydari voiced.

Later on, on page 161 of the proceedings of the same day, Sir Akbar Hydari said this:—

> "I am at the moment speaking for my State, and I say that I will make no claim of any kind. I will try and start the Federation, so far as my State is concerned, with whatever revenues you are getting from me in the shape of your Customs—Sea Customs—or Salt, and all those sources of revenue from which you are levying."

I admire these generous sentiment of Sir Akbar Hydari.

Sir Akbar Hydari: To which I adhere.

Sir Tej Bahadur Sapru: Then I should like to draw the attention of the Committee to a very remarkable statement made by my friend, Colonel Haksar, who, I believe, occupies a very peculiar position in the organisation of the Indian States. I cannot be more emphatic than Colonel Haksar was on that occasion, and this is what he said. It is on page 170:—

> "What I want to explain is that all the States are extremely anxious that federation should come."

Colonel Haksar: Yes, and I still say so.

Sir Tej Bahadur Sapru: He goes on:—

> "They all realise that the investigation they are suggesting is an investigation into a position which has come into being during the course of 100 years. That investigation cannot be carried out in 100 days; it will take time. At the same time, as they are all anxious that the Federation should come into being, all that I have said is a plea for ensuring that the States should come into the Federation feeling that their rights will be investigated. Without that assurance they might find it extremely difficult to come into the Federation. Therefore, if our sub-Committee here recommends, and the other Committee recommends, and it is understood that their claim will be investigated and adjusted, I have no doubt in my own mind, speaking from my personal knowledge of their wishes, that they would be quite content to accept the formula that their claim, for purposes of adjustment, should be treated as a claim which will be implemented when the finances of the Federal Government permit, and that the relief which is due to them might be spread over a number of years. There is no idea of wanting relief at once."

Let that be noted:—

> "There is no idea of making it a term of their entry into the Federation."

I again invite attention to that sentence.

> "But their position must be made quite clear, that it is understood that that position must be rectified. It will be determined by investigation, and effect will be given to the result of the investigation when the circumstances of the country permit."

Then Lord Peel followed:—

> "I think I can speak for the sub-Committee here. We did not in the least misunderstand your meaning, and I think we are also extremely indebted to you for a very clear and brief statement of the situation."

If Lord Peel will permit me to say so, not only did he not misunderstand what they meant, but none of us have misunderstood what they meant on that particular date. Therefore, the question arises, why this change of attitude?

Sir Akbar Hydari: There is absolutely no change of attitude, and I can prove it.

Sir Tej Bahadur Sapru: I shall be very glad indeed if, at some stage or other, you can give us the assurance that there is no change of attitude. That is all the assurance we want. But, having read this paragraph, I would beg you to remember that it is not always the case that second thoughts are best. Sometimes you find that first thoughts are best.

Sir Akbar Hydari: There are no first or second thoughts in this case. My thoughts are all of the same category; they are the best.

Sir Tej Bahadur Sapru: The question really arises, what is the way out? So far as I am concerned—and I believe it is the sentiment of every one of us on this side—I wish to say that nothing is further from our intention than that, by asking the Indian States to come into the Federation, we should put a heavier burden on them, or that matters in which they feel so very keenly should not be carefully and impartially investigated. But, at the present moment, it is quite clear that we can only come to agreement on questions of principle. Questions of detail must be left to the experts. When I talk of experts, I do not mean mere dry financial experts who can forecast with their figures and with their theories, but I mean men who know the subject from practical experience, men who have intimate and direct knowledge of the working of the financial system in British India on the one side, and of the financial systems working in the different Indian States on the other side; and men who will meet together, discuss things between themselves, and submit a Report.

When that Report is ready, before whom is it going to be laid? I do suggest that it will be open to Their Highnesses to demand that the Report of the experts shall be laid before them. I do suggest that it should equally be laid before us; but ultimately you cannot avoid—unless you want a decision to be imposed upon you by a third party, which is wholly inconsistent with the principle of Federation—the fact that that Report must go before the Federal Government, and be endorsed by the Federal Government, which shall be ultimately responsible for enforcing those decisions. This is exactly what was done in South Africa. When I referred to Section 188 of the South African Constitution, I made a very friendly suggestion to the Indian States. I am afraid my point was not appreciated yesterday. It was pointed out by Lord Lothian, in the course of a remark which he interjected, that the Constitution of South Africa was not of a Federal character. That is quite true, but nothing turns upon the question as to whether the Constitution is Federal or Unitary. It was a method or a procedure adopted for settling relations between the Central Government and the different units, which is exactly the same problem as that with which we are face to face; and I will read the section again so that my friends may see that, if this procedure is followed, they will have their representatives on the Committee, we will have our representatives on that Committee, and the President will be an outsider who will be a member of the Imperial Services. If you do not like to have a member of the Imperial Services you can have any outsider; I will have no objection to that. Now, Section 118 of the South Africa Act provides as follows:—

> " The Governor-General in Council shall, as soon as may be after the establishment of the Union, appoint a commission, consisting of one representative from each province, and presided over by an officer from the Imperial Service, to

institute an inquiry into the financial relations which should exist between the Union and the provinces. Pending the completion of that inquiry and until Parliament otherwise provides, there shall be paid annually out of the Consolidated Revenue Fund to the administrator of each province . . . ."

certain sums. Therefore, so far as the constitution of this Committee is concerned, I would suggest that the Indian States and British India should be adequately represented; and I do not envisage this Report, when it is ready, being absolutely binding on both parties. It will have to be considered, notwithstanding the fact that it will be a report of experts, by the different Units, as well as by the Federation itself. If there are some deficiencies or defects in that Report, they can be remedied again by referring it back to that Committee; but, speaking for myself, I think that, although we may feel attracted by the suggestion that there must be an Expert Committee now appointed, or appointed immediately after the termination of this Conference, yet I do not think that that Expert Committee can take you very far.

Well, there are certain factors which we have got to face, and which that Committee will have to face; and I imagine that, in the absence of definite information as to what will be the ultimate Military Budget of India—and it is quite clear to my mind, whether we like it or not, that the Military Budget of India cannot remain at the figure at which it stands at the present moment—until we know what will be the financial position of India when Burma has gone out (if Burma does go out at all), until we know what will be the position in India after a year or a year and a half on account of the world currency and exchange problems, it will be impossible, I should think, for that Expert Committee to make any satisfactory Report determining the relations of the Indian States and British India. They cannot, I venture to think, prepare at this stage a satisfactory Budget. All these circumstances will have to be taken into account by the Expert Committee, and I do not think that they will be in a position definitely to decide anything with regard to these circumstances until a year or a year and a half hence; whereas, if you appoint such a committee as I have suggested after the constitution has come into force, most of these factors will be by that time much more clear, and the committee will then be able to see what are the financial obligations of the new Federation, what are the financial resources, what are the possible sources of taxation, and what is fair to the Indian States and what is fair to the British Units.

Mr. Jinnah: What is to happen in the meantime?

Sir Tej Bahadur Sapru: I am just going to say that. Mr. Jinnah was not present yesterday. I suggested, following the precedent of South Africa, following the precedent which you will find in the Australian Constitution, that you will have to make a provision for the interim period until the whole thing is over. Now,

if you will just wait one moment I will refer to Section 118 of the South Africa Act. It is provided there that:—

> "Until such inquiry shall be completed and Parliament shall have made other provision, the executive committees in the several provinces shall annually submit estimates of their expenditure for the approval of the Governor-General in Council, and no expenditure shall be incurred by any executive committee which is not provided for in such approved estimates."

There were similarly, in the Australian Constitution, temporary provisions. There the interim period extended to five years and ten years in regard to different matters, and there are there laid down certain provisions which I will just read out to you.

Chapter IV of the Australian Constitution Act of 1900 deals with that. Take for example Section 87, which reads:—

> "During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, of the net revenue of the Commonwealth from duties of customs and of excise not more than one-fourth shall be applied annually by the Commonwealth towards its expenditure.
>
> The balance shall, in accordance with this Constitution, be paid to the several States, or applied towards the payment of interest on debts of the several States taken over by the Commonwealth.
>
> 88. Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth."

Then there is a clause which deals with payments to States before uniform duties. I should leave the question to be decided by the Government as to what is to be done during the interim period; but you will have to provide for the interim period, whether it be a period of one year or more. On that point—the length of the interim period—I express no opinion whatsoever.

Sir Maneckjee Dadabhoy: I should like to point out that, in what you are recommending, you are going in excess of our recommendations in paragraph 26 of our Report. It was not at all our intention in any way to associate with this Expert Committee anybody who had any direct interest. We asked for a body absolutely impartial, and unprejudiced, and a sort of arbitrator to settle the dispute.

Sir Tej Bahadur Sapru: I endorse nearly every principle embodied in your Report, and only in regard to your recommendations concerning the Expert Committee do I venture to differ. If we accept Sir Akyar Hydari's submission yesterday, this Federation cannot come into existence for many and many a long day, and it is not a very desirable thing that we should leave it in that uncertain position. On the question of principle there can be agreement, and we must arrive sooner or later in this Conference

at a stage when we should come to some definite conclusion. But, on the question of the working out of the details, I suggest that you should appoint a committee, and, in order to satisfy the different Units, I should have their representatives on that committee under the presidency of an absolute outsider not identified with one element or the other.

Sir Maneckjee Dadabhoy: Will there be an agreement between that committee and the other?

Sir Tej Bahadur Sapru: Why not?

Sir Maneckjee Dadabhoy: With great respect to your better experience and judgment, Sir Tej Bahadur, I am distinctly of opinion that, if a committee is appointed of the nature which you suggest, there will be conflict of opinion and there will be no agreement and no united decision.

Sir Tej Bahadur Sapru: May I respectfully reply—is there any guarantee there will be agreement among the outside experts?

Sir Maneckjee Dadabhoy: At any rate, the outside experts will take a detached and unprejudiced view, and each party will be bound to accept their decision as coming from an independent source.

Sir Tej Bahadur Sapru: According to my suggestion, the report of this committee will not be binding and final on anybody. This will have to be considered. That is the true constitutional position; this will have to be considered by the Federal Government and by the different Units. It is open to Their Highnesses to discuss that report amongst themselves in the Chamber of Princes; it is open to them to consult any advisers they like. It is open to them to say they want further enquiries to be undertaken. But I should not like to divest the Federal Government of its responsibilities in the matter.

Sir Maneckjee Dadabhoy: Pray let me tell you that, when we discussed this question in our sub-Committee, we all practically agreed that, in appointing this committee, both the British Indian Delegation and the States Delegation would accept the decision of that tribunal.

Sir Tej Bahadur Sapru: If that was your agreement then let me tell you frankly I do not agree with that decision of yours, and I do not think it is fair that you should deprive the Federal Government of its say in the matter. I do not think that is fair to the Federal Government.

Sir Maneckjee Dadabhoy: We thought that was the best possible method of coming to some decision. Otherwise we should be in a hopeless state of disagreement and the settlement of this question would be put off indefinitely.

Sir Tej Bahadur Sapru: But, when you are forming a Government of your own, you cannot always go to arbitration and to third parties to settle disputes amongst yourselves; you must face the responsibility of deciding your own disputes.

Sir Maneckjee Dadabhoy: Exactly. This arbitration must not be taken in the sense of a court arbitration. It is an arbitration agreed to on one side by the representatives of the States and on the other side by the representatives of the British Indian Delegation.

Sir Tej Bahadur Sapru: May I say in reply that I have carefully gone through the proceedings of the sub-Committee, and, as I said at the beginning of my speech, I do not find that this question of the composition and character of this Expert Committee was ever considered; and I appeal to Mr. Iyengar to say whether I am right or wrong in that. I shall be very glad to be corrected, but I do not find that this question was ever taken into consideration. It only finds a place in paragraph 4 of the Report; and, if you read paragraph 4 of the Report, you do not find any indication of the character and composition of the Committee, nor do you find anything to say that its decision shall be final. That is the one defect which I find in your otherwise excellent Report.

Dr. Shafa'at Ahmad Khan: May I put a question to you, Sir Tej Bahadur? Is it necessary that the Princes should appoint their own representatives? Would it be sufficient if the men appointed had the confidence of the Princes?

Sir Tej Bahadur Sapru: It is for Their Highnesses to say.

Mr. Iyengar: I want to make this clear. We did not understand that this Expert Committee was to be a committee of arbitration to whom all questions were to be referred for final decision; certainly not.

Sir Maneckjee Dadabhoy: I did not say that.

Sir Tej Bahadur Sapru: Speaking for myself, neither as a member of the British Indian Delegation nor, if I were a member of the Indian States Delegation, in that capacity, would I agree to leave the decision of these big questions to the arbitration of any outside body, howsoever distinguished that body may be. I do not want to divest the Government of its responsibility. That is all I want to say on this matter.

Lord Peel: May I say, Sir Tej, that Mr. Iyengar was perfectly right. Nobody dreamt that such a committee of experts was to be an arbitration body whose decision should be final.

Sir Tej Bahadur Sapru: I am glad Your Lordship has said that, because that was my impression also.

Sir Maneckjee Dadabhoy: I did not say anything to the contrary.

Lord Peel: Therefore the only defect you have found in our Report has now disappeared, and it is now without flaw or blemish!

Sir Tej Bahadur Sapru: It is for Their Highnesses to make up their minds and say whether they accept the procedure I have suggested, namely, that the Federation should come into existence without delay, and then that these questions should be investigated; or whether everything should hang in the air and the whole ques-

tion we have been interested in during the last two years should be buried.

Sardar Ujjal Singh: What do you mean by "outsiders"?

Sir Maneckjee Dadabhoy: I mean a man who will hold absolutely detached views, who is not interested in the position of the Indian States. I mean an experienced and practical man who knows the working of the Indian States' administration, and who would be in a position to come to an unbiassed decision. Lord Peel, in opening his speech yesterday, made it perfectly clear also that it was understood that, on this Expert Committee, no representative either of the Indian States or of the British Indian Delegation would be put, but only practical men.

Sardar Ujjal Singh: Where will you look for these men—in India?

Sir Maneckjee Dadabhoy: Wherever you can secure them. If you can secure them in India, all the better; but you may have to get them from England.

Mr. Jinnah: I would like to understand a little more about this Committee. Who will appoint this Committee?

Sir Tej Bahadur Sapru: I anticipate that the Committee will be appointed by the Federal Government. That is my view.

Mr. Jinnah: When that Committee is appointed, it will make its recommendations which, I understand from the Report will be embodied in the constitution.

Sir Tej Bahadur Sapru: No, I do not accept that.

Mr. Jinnah: Then what will happen to the recommendations?

Sir Tej Bahadur Sapru: The recommendations will be discussed by the Federal Government, and either accepted or modified or varied by agreement.

Mr. Jinnah: Then whatever the decision of the Federal Government may be, it must be embodied in the constitution?

Sir Tej Bahadur Sapru: No. The principles will be embodied. This Expert Committee will not be in a position to lay down principles for us. It will only carry out its functions so far as the working out of those principles in detail is concerned.

Mr. Jinnah: It is what the Report says.

Sir Tej Bahadur Sapru: I am not supporting the Report; I am differing from the Report on that point.

Mr. Jinnah: The Report says:—

> "Any theoretical scheme for the division of resources and obligations should, before being embodied in the Constitution, be put to the test of a careful examination of its probable results by some body which is fully equipped for the task."

Sir Tej Bahadur Sapru: That is a passage from which I differ.

Mr. Jinnah: Your proposal, I understand, is that the Federal Government should appoint a Committee, and that that Committee should investigate and recommend?

Sir Tej Bahadur Sapru: On the lines of the principles agreed to by us.

Mr. Jinnah: I follow that. Then, after the Report is submitted to the Federal Government, the Federal Government will decide, and whatever that decision may be———

Sir Tej Bahadur Sapru: That will be acted upon.

Mr. Jinnah: Would become part of our Constitution?

Sir Tej Bahadur Sapru: Yes.

Sir Akbar Hydari: I think it is due to this House and to the States that I should venture to clear up a very great misunderstanding which seems to underly the whole of the speech of Sir Tej Sapru, which, I must confess, has greatly surprised me, as has also his reference to the provision in the South African Constitution, yesterday, as having been relevant to the question before us. Well, I realise, as was pointed out by Lord Lothian, that that was a provision which applied to quite a different set of circumstances from what we are faced with to-day—a provision which might have been relevant if you were desiring to regulate what should be done during the interim period for British India, supposing the Federation was for British India alone, but which I consider (and I venture to say it with all due respect to so eminent a constitutional lawyer) was beside the point when we are considering a Federation in which the Indian States were to come in.

I want to make clear another point. If you will turn to pages 82 and 83 of the report of yesterday's proceedings, you will find that I stated definitely, as regards the peculiar position of Hyderabad, that it was not different from what I had taken from the outset. I said on page 81-82:

> " So far as Hyderabad is concerned, I have gone further; and I have said that, if you are going to confine yourselves to the present revenue and expenditure of India as they are, to the burdens which exist at present, without any compensation one way or another, and without the imposition of any fresh burdens, I for one will not object to a financial settlement of that kind."
>
> " But we have to go very much further. There are many States which have special claims and so on, and we find that even the Provinces themselves want certain adjustments. All these things require exploration, and unless and until that exploration has been completed, it is surely but reasonable for every federating Unit, and certainly for every Indian State, to reserve to itself the liberty of saying whether with such and such burdens, or with such and such possible burdens, it will prefer to come in or to remain where it is."

I feel, Sir, that there has been also a certain confusion of thought with regard to this Expert Committee. It will be observed that two Expert Committees have really been envisaged. The first one, which is the most important one, is the one to which really paragraph 4 specifically refers. It is a general Committee which is not going merely to deal with details but is also going to deal with principles, because it was at the instance of the British Indian side that we made the terms of reference to that Committee so wide as to say:—

> "The Expert Committee must have for its guidance some general principles of the kind set out below; but it should be free to make alternative suggestions if, on closer examination of the facts, a probability is disclosed that any general principle laid down by us would, in practice, prove unworkable. In addition to the Committee's duty of framing a general scheme, there are also many specific points, some of which we mention below, on which its advice should be sought."

Therefore, I say that this Committee really will be doing work which would have been brought to a completion by the Federal Finance sub-Committee if it had had the time and if it had had the material; but this Committee will be doing this work, which will be, as is put down here, a—

> "scheme for the division of resources and obligations (which) should, before being embodied in the Constitution, be put to the test of a careful examination of its probable results by some body."

If you will refer to paragraph 26, you will find that it states:—

> "We therefore advocate a division of the field of enquiry into two parts. The principal object of the first enquiry would be a general survey of the problem and an examination of the questions dealt with in paragraphs 5 to 17 and 21 to 25 of our Report."

Therefore, I beg to say, that it is essential that the report of this enquiry should be before the federating Units, and certainly before the Indian States; while it must be brought before the framers of the constitution before they can frame the constitution itself. This would not take longer than the time which would be taken for deciding upon various other constitutional questions which will be required to be decided before we can frame the constitution. I really do not see any difference between what I said before and what I said yesterday; and, if I may be permitted to say so, what in some respects Sir Tej Bahadur Sapru himself has said. He himself says that the Report of the Committee will have to come before the federating Units. They will have to make up their minds upon it. That is exactly what I said. I will come to the point at which I differ from him. He insists that the conclusions of this Committee must be endorsed by the Federal Government. That is what he is

insisting upon. What I want to know is, supposing the report of the Federal Government in some points is such that it is not acceptable to a particular State which had already entered into the Federation, will you allow the State to come out?

I have been already pointing out that there are two Committees. One of these is the Expert Committee for general principles and for constructing a general scheme of Federal Finance, and also for determining the possible field of future burdens of the States and of the federating Units, the possible way in which surpluses should be distributed, and so on, which are all essential for bringing into being the constitution. Whatever Sir Tej Bahadur Sapru read out about my waiting for the Greek Kalends, and so forth, that was with reference to the particular claims about ceded territories, cash contributions and adjustments in case you do not take up the burdens as they are. That is for the other Committee. The position has been taken up, and quite rightly, that even the Report of that Committee will not be an arbitration. It is not an arbitration.

If it is not going to be an arbitration, then what happens, Lord Chancellor, to your illustration yesterday of somebody having come to you for an arbitration and then, after the award was given against him, contracting out of it and saying he would not have it? In any case it is possible to say, with regard to the second Committee, which is to deal with the specific claims of specific States, that that should be an arbitration proceeding with the consent of the parties concerned, and its decision should be final. But I make bold to say, with all the force at my command, that the first Committee deals with general principles of a kind which have to be determined, not merely in the interests of the Indian States, but because the framing of the constitution requires that to be done. I consider it is not fair to say that the position we are taking up in this regard is a position which is tantamount to saying that we will not have a Federation at all, or to say that it is a position which is different or distinct from the position which we have all along taken up.

So far as Hyderabad is concerned, I repeat that my position is a much more generous one in many ways; but I consider that I have to speak, not only for Hyderabad in some ways, but also to recognise the various difficulties which confront the States, and I must not give my support to a proposition which will make federation impossible. Let me say that, when I said whether we will make a Federation or not, I meant whether the Federation will be made in a way which will enable the Indian States to enter, so as to make that Federation a real Federation or not. It is merely a different way of saying the same thing. You yourselves elsewhere are going to say that, unless 51 per cent. of the States come in, it should not be considered that there is an all-India States' Federation; and I say that is merely a difference of words. The main point is, that you have to place before each side the picture of what it is going to enter, and before you place before it that picture you cannot ask whether it will come in or not. If you make it such that a

large majority of the States do not come in, it means there will be no Federation in the sense in which we have understood it.

H.H. The Nawab of Bhopal: Lord Chancellor, I begin my remarks with great diffidence, because I do not claim to possess an expert knowledge of finance, nor am I familiar with the intricacies of the subject. To deal with it technically is the work of the Committee of Experts, for which proposals have been made. I shall, therefore, confine myself to observations on broad issues as they strike a layman looking at the problem primarily from the point of view of the States.

Need I assure this Committee, Lord Chancellor that the States approach this problem of Federal finance in a genuine spirit of active co-operation and helpfulness? They are ready, even anxious, to help in arriving at an all-round satisfactory solution of the problem before us; but they trust that their own particular difficulties will meet with the same measure of appreciation and sympathy from their colleagues on the other side. The Committee knows that we have responsibilities to our States and peoples which must, apart from our commitments under the Treaties, necessarily condition and limit the actual measure of the co-operation so willingly extended by us.

I should like to make this point clearer. If the Federation was not to be, and the States were to remain in their present position, they would have pressed for an immediate and equitable adjustment of their legitimate financial claims based on their rights, in order to accelerate the pace of progress and development in their territories. Now that they have agreed to pool the resources they would have derived from such adjustment, they will have to find fresh sources of revenue. Their sources of revenue are not very expensive, while their expenditure is likely to grow on account of federation; hence, their immediate difficulties in making the two ends meet. These are the considerations which must needs impose limits on our contribution to the solution of the problem.

Taking expenditure first, I propose to deal with the question of pre-Federation debt. The States, I think, will be prepared to agree that the Federal Government should take over the debt service as well as the corresponding assets of such departments (for example, Posts and Telegraphs) as are made Federal. As to the remainder, if British India so desires, the States, in the interests of Federation, would in my judgment agree to its being made Federal, provided that, as recommended by the sub-Committee, after examination it is found that the service thereof is covered by receipts from productive British Indian assets made over to the Federal Government for the purpose. If there be a balance, it would naturally be as suggested, a first charge on receipts from British India. While leaving the question of valuation of assets as against pre-Federation debt to expert examination, I may be permitted to make a passing reference to the point in connection with the assets represented by British Indian Railways. It is argued that, because the Railways make a contribution of 5 crores a year to the general

revenues, they may be taken to represent a capital value of one hundred crores in excess of their book value. I understand—and I hope I shall be corrected if I am wrong—that the railway earnings during the last ten years have not been sufficient to enable them to pay the full extent of this contribution. As a matter of fact, occasion has arisen when this contribution has been paid out of reserve; and, with the disturbed economic conditions and competition by road transport, it cannot be said with certainty how far it would be correct to assume this contribution of 5 crores as a normal figure. Another point to which I would like to draw the attention of the Committee is this. It is true that the Federal Government will be taking over certain buildings and works from the Central British Indian Government. At the same time, I may be allowed to say that in so far as the States have paid all " indirect " taxes with British India, they have all along contributed to the revenues out of which either these works were constructed or their capital cost was redeemed. Thus, whether we consider the position of the railways in federation, in the light of the experience of the past ten years, or whether we consider the title as beneficiaries of the States in federation to the civil buildings, the inheritance appears to be not so magnificent as might be thought.

The next item upon which I would like to comment is what is referred to in the Report as " Central " Charges. In the best interests of the States in Federation, my personal view is that, as far as possible, these charges should be eliminated from the Centre. One way of doing this is to make arrangements by a provision in the constitution to meet these charges from Contributions paid for the purpose by the British Indian Provinces out of the proceeds of Income-tax which might wholly be declared as a Provincial source of revenue. The bulk of these charges represents service of a portion of pre-Federation debt, and obligations in respect of pre-Federation pensions. Both these are vanishing items, and the arrangement suggested would, in my opinion, be more suited to the requirements of the case. As to the expenditure in regard to departments proposed last year to be classified as " Central," it would be very small, and could perhaps be further reduced by a re-examination of the few heads proposed to be dealt with by these departments, with a view to finding out if these could not either be federalised, or handed over to the Provinces.

The other important head of expenditure I would like briefly to touch upon, is in regard to pensions and superannuation allowances. But for the fact that these charges have been partly met in the past from sources of revenue which will become Federal, to my mind there would have been no justification for charging these to the Federal Government, since even according to the Memorandum of the Finance Department, they represent deferred pay for services rendered before the Federation came into being.

Sir Maneckjee Dadabhoy: Yes, but we have agreed to that, Your Highness.

H.H. The Nawab of Bhopal: The question requires detailed and careful examination by the Expert Committee, to arrive at a proper adjustment of these charges as between the Federal Government and British Indian Provinces. In dealing with this matter, the Expert Committee will, I am sure, take into full consideration the pensionary charges in respect of pre-Federation services of officers still in service, and of any proportionate pensions that may be sanctioned in consequence of the constitutional changes for officers who may not wish to serve under the Federal Government of the future. I feel confident that, as a result of this expert enquiry, the burden of pensionary charges of the Federal Government will be considerably lightened. The Provinces will, of course, contribute their share towards the payment of these charges in the same manner as in the case of purely British Indian debts.

As to the remaining heads of expenditure agreed to be federalized, there may still be, I venture to submit, considerable scope for economy, without impairing the efficiency of the service, which can be effected by controlling expenditure more strictly. In this connection I would like to emphasize that, having regard to the present financial position of India, the need for drastic cuts is clearly indicated, and the framing of the Federal Expenditure Budget must proceed on this basis. As it is, even since the Memorandum of the Finance Department was prepared, proposals have been made by the Government of India whereby considerable economies are being effected under the various heads of expenditure, the liability in respect of which will, in future, be Federal. We are happy to endorse the suggestion of the Committee:—

> "that all the governments should exercise the strictest economy and that their scale of expenditure should be reviewed and reduced to a minimum."

It is to be clearly understood, however, that such a review would be made by the governments of the federating Units themselves, and not by the Federal Government.

We agree that the deficits of Chief Commissioners' Provinces should be a Federal charge, and that the North-West Frontier Province, when it is made into a Governor's Province, should receive a subvention from the Federal Budget, to provide for the difference between revenue and expenditure. If the Income-tax is made a Provincial source of revenue, the budgetary deficit of these Provinces and areas will decrease by at least about one crore, and with the better development and utilization of all the available resources, as, for example, forest resources of the Andamans, the gap between the revenues and expenditure would further be abridged.

Now, my Lord, turning to the revenue side of the problem, the first proposition I should like to put forward on behalf of the States is that the Federal revenue should be strictly confined to the specific cases agreed upon to be federalised, and that is by "indirect"

taxation only. With a view to providing for emergencies, to give the Budget a certain measure of elasticity, these sources of revenue may be supplemented by the development of certain public utility services or the profits of Federal enterprises in such articles as may hereafter be agreed upon and be specified. We appreciate the necessity of contributions by the federating Units to the Federal Government in cases of grave emergency, such as war, when the very existence of the State may be in danger. We are in the fortunate position of having always voluntarily, and to the maximum capacity of our resources, come forward to the help of the country and Empire whenever any emergency has arisen. We have done so in the past and may be depended upon to do so in the future. Such help, I am convinced, has always been in excess of any contribution made on any *pro rata* basis. Thus, in the event of an emergency, reliance can surely be placed upon the States to do their share without the specific provision in the constitution. The method, I suggest, would help to conserve the sentiments of the States, which would undoubtedly be an asset of the Federation.

I would now address myself to the suggestion that the Corporation tax should be federalised. The Report of the sub-Committee contemplates that resort to this step should only be in case of certain eventualities. Our business should be to obviate that eventuality. I find that, in the classification of existing and possible sources of revenue, this form of taxation has been included. I want to say that it would not be fair to treat this suggestion as our final recommendation, unless and until every avenue leading to every possible reduction of expenditure has been explored. When this has been done, and it is still found—which we do not believe would be the case—that our Federal resources fall short of our expenditure, it would be time enough to ask the Federal Executive and the Legislature to consider the advisability of tapping this source of revenue.

We are glad that the sub-Committee have appreciated the special position of the Maritime and Frontier States, and of the States having special interest in the manufacture of salt. It is gratifying for us to be assured that their claims will be examined in the light of their special Treaties or engagements.

There is, however, one point in connection with the internal Customs barriers, which, in my opinion, needs special attention. I may be permitted to point out that the States regard this source of revenue as doubly valuable to them. They attach great importance to it as a part of their sovereign rights. Secondly—which is a very pertinent and material consideration—most of the States, which have imposed these duties, find them an indispensable source of revenue. I personally believe, however, that in the interest of free trade of the country, the abolition of these duties should be kept in view as an ideal to be realised as and when the economic development of the States enables them to derive the same revenue by the substitution of other possible sources of taxation.

We appreciate fully that, in these days of worldwide economic depression, we cannot always rely on the present yield of the existing " indirect " sources of revenue enjoyed by the Central Government which will become Federal. We must therefore keep in reserve certain other sources of revenue. The States would therefore, in my opinion, be prepared to consider the proposal to supplement present revenues by:—

(1) A few Federal monopolies in articles of general consumption, or in public utility services, agreed upon as between the federating Units, and the Federal Government.

(2) Excises on specified articles other than Alcohol, Drugs and Narcotics, the list of which is similarly agreed upon.

One general observation may, however, be offered even at this stage; and that is, that the one condition on which a monopoly can be allowed to the Federal Government is that the article monopolised must be of common consumption, and as far as possible, be evenly distributed all over the country so far as its production goes, in order that the indirect advantage involved in the employment of labour, in the manufacture and sale of such articles, should be as evenly spread all over the Federation as possible. I trust that this suggestion of mine will be found useful in improving the financial position of the Federal Government, and therefore suggest that the detailed examination of certain articles or services for which Federal monopolies may be established, and recommendation of a list of specified articles on which Excise duties may be levied by the Federal Government, may be entrusted to the Expert Committee.

The foregoing remarks on the " indirect " taxes to provide the margin of elasticity must, however, be taken as subject to two main limitations:—

(*a*) These sources of revenue should not, in the deliberate opinion of the States, form a permanent and integral feature of the Federal Budget, but should be regarded as preserves to be resorted to only as and when required.

(*b*) If and when the proceeds of any such taxation exceed, in any year, the requirements of the Federal fisc, the balance of the surplus should be distributed among the constituent Units of the Federation on such basis as is agreed upon.

I have one more observation to make in this connection. In regard to paragraph 12 of the sub-Committee's Report, the States agree with the view which lays down that the Federal Government should only be empowered to levy taxes specifically scheduled by common agreement as sources of Federal revenue. All the residuary sources of revenue should be left to the federating Units.

As regards contributions from States, sometimes incorrectly referred to as tributes, the States are glad to notice that British Indian opinion supports the demand put forward by them that they should disappear. They cannot, however, agree with the view

expressed by the sub-Committee that such contributions should be wiped out *pari passu* with the Provincial Contributions. The States' contributions cannot be treated on the same footing as Contributions made by the Provinces, if only because the States have shouldered their burden for over a century, whereas the burdens borne by the Provinces are comparatively quite recent. It must not be forgotten that, however the nomenclature might have been recently altered on account of the protest of the States, the contributions, if maintained, will continue to have, as the Government of India Memorandum itself admits, an air of feudal relationship—a relationship which does not in fact exist besides being wholly inconsistent with the idea of Federation. The States therefore ask that the cash contributions should be abolished forthwith. This applies equally to payments made through the medium of ceded territories.

The States are prepared to agree to the proposals of the sub-Committee regarding the borrowing powers of the Units, and the security for post-Federation debts. They are also in favour of the formation of a Federal Loan Board on the lines suggested by the sub-Committee, subject of course to the condition that it will be left to the option of the States to join it or not. This Loan Council may also serve to liquidate that portion of the liability in regard to the pre-Federation debt of India, which, as I have indicated, is not chargeable to the Federal Government as a whole, and which accordingly will remain as a British Indian concern until the liability is finally extinguished.

The States are in full sympathy with the proposal to entrust a detailed examination of the financial proposals to a body of experts. They would prefer to have a representative Committee as proposed by Sir Tej Sapru; but, if that is not accepted, we may be allowed to point out that the States as federating Units are intimately concerned with the problems proposed to be entrusted to the two Committees, and if experts from British India and other experts appointed by His Majesty's Government are to sit on these Committees, it is hoped that experts from the States will also find seats, on both the Committees.

Before I finish, I would like to add that the States fully realise that " changing industrial and economic conditions may, at a date earlier than might now be anticipated, make it imperative to modify the financial scheme adopted at the outset." But, if it is considered necessary that amendment of the constitution in this respect should not be so hedged in with difficulties as to make any change almost impossible, it is equally necessary to lay down in the constitution that no altered financial scheme shall involve any fresh financial burdens on the federating Units without their free consent.

I apologise for having taken so much of your time, and I am grateful to you, Lord Chancellor, for having permitted me frankly to place our point of view before the Committee.

Sir Maneckjee Dadabhoy: May I ask a question of His Highness? Your Highness has given us a full expression of your views,

but I have not been able to follow at what stage the States would come into Federation—whether after the Report of the Expert Committee or immediately, the States abiding afterwards by the Report of the Expert Committee.

H.H. The Nawab of Bhopal: We will come in to-day if you will give us our terms!

Sir Maneckjee Dadabhoy: I want to know exactly at what stage you would come in—whether the Federation is to be postponed until all this enquiry has been made, and then Your Highness decide the question whether you should come in or not; or whether the States will enter the Federation immediately, and leave the settlement of these questions to a later stage?

Chairman: With regard to that, I think I had better say this. That is a question, no doubt, that you would consider amongst yourselves; but, at the present moment, the suggestion is that a Committee should be appointed. The sort of suggestion is this, as I understand it from Sir Akbar. He says, "Well, we do not want to buy, as I put it yesterday, 'a pig in a poke,' and we should very much like to see what the financial obligations are." I will not say "obligations," but "what the financial method is." That is a very fair request. The only point I am on is this. I had a little in mind yesterday, the point about the Greek Kalends, of which I have a very great horror; but Sir Akbar explained that quite frankly yesterday. What he said was this: "Oh, well, it is not the Greek Kalends so far as this is concerned, but I hope it will not be more than twelve months." Well, supposing the position is this. Supposing we were to appoint this Committee and it got through, as I should hope, in much less than twelve months; supposing it got through, we will say, in three months, and the whole thing was cleared up by then—then I think we should all be in a position to say when the States would come in. I do not think, at the present moment, he can answer the question quite straight off. I suppose you would have no objection, would you, if a Committee were appointed, and made its Report in three months?

H.H. The Nawab of Bhopal: May I just have one word? There may be some misunderstanding. I wish to point out that Sir Akbar has all along been speaking for, and giving expression to, the views held by the Indian States Delegation; but after hearing Sir Tej Bahadur Sapru and noting the remarks that have been made, if, as you have just said, some time is given to us, and if it is necessary, we shall be able to give our opinion later on.

Sir Akbar Hydari: I want to say that the reference to the Greek Kalends was more or less with regard to the second Committee.

Mr. Jinnah: It seems to me that, so far as this Report is concerned, it certainly contemplates that the Federation cannot come into being until some scheme is formulated, and for that purpose a Committee has got to be appointed; and until that Committee makes its recommendations, and until they are adopted *in toto*, or as

modified, but adopted, and a scheme is framed, the Federation cannot come into being.

Sir Tej Bahadur Sapru: That is so.

Mr. Jinnah: That is, as I understand it, the Report. To that the objection is raised that that will take a long time, and that there will be undue delay. Now, Sir, it seems to me that there is some confusion when we talk of anybody coming into the Federation without some scheme being adopted, and it is not fair to ask him, "Are you coming into the Federation?" without there being any scheme. Therefore, you must have a scheme before the Federation comes into being. The question is, are you to have a tentative scheme or are you to have a final scheme? Well, Sir Tej Bahadur Sapru's position is this—that a Committee should be appointed by the Federal Government. But the Federal Government cannot come into being unless there is some scheme—the Federation cannot come into being—and therefore it seems to me that, unless we get some scheme which must be adopted, and which will be the basis of working, your Federation cannot come into being. Therefore, what I suggest is that it is of no use evading the position taken up by the Indian Princes when they say that they cannot decide to come into this Federation until they see the scheme. It seems that the only course open to us is that we must arrive at some scheme as soon as possible.

Sir Maneckjee Dadabhoy: As a result of what Mr. Jinnah has said, if an Expert Committee is to be appointed immediately, it must be appointed by the Crown and not by the Federal Government, because the Federal Government is not yet in existence. That is where I could not follow exactly the views of Sir Tej Bahadur Sapru.

Sir Mirza Ismail: I feel that it is incumbent upon me to supplement as briefly as possible the remarks of His Highness regarding the cash payments which are levied upon some of the States. Sir Tej Bahadur Sapru has made some very helpful suggestions in this matter, and I am most grateful to him for his friendly attitude. It will be recalled that, in this Committee, and subsequently in the Finance sub-Committee, I made it quite clear that Mysore can be satisfied with nothing less than the immediate disappearance of this tribute—to give it the old name, which more correctly defines the real position than the name of "cash-payments" which has recently been substituted. I naturally speak more particularly for Mysore, and I need not remind the Committee that no other State has been a more steadfast and consistent supporter of the Federal plan. I was reluctant to suggest any reservation or dissent when the draft Report was before us, since we achieved such a large measure of unanimity. After all, the unfair incidence of these tributes was recognised in the Report, though, unfortunately, the sub-Committee did not propose to give full effect at once to such recognition.

It is now my duty to appeal to this Committee to carry to its logical conclusion the unconditional recognition in the Report that there can be no place for contributions of a feudal nature under the

Federation. It seems to me that, neither on grounds of justice nor logic, can it be maintained that the Report is right in taking the probability of the Federal deficit at the outset as a reason for not recommending immediate abolition. Equity has been long delayed; but is it to be further delayed for years because it is expected that the money will be needed? Compared with what must be the large total of Federal revenue, the amount involved is small; and surely it ought not to be beyond the skill of the Expert Committee, which it is proposed to set up, to suggest other ways of obtaining the amount rather than that of continuing an admitted injustice and anachronism. A State which like Mysore, bears so disproportionate a part of the burden, will have some relief by the proposal of the sub-Committee that there should be an immediate remission of that part of the tribute which is in excess of 5 per cent. of the total revenues of the State. Incidentally I would point out that this concession goes some way at least to break down the argument that the continuance of the tribute is a financial necessity. What we ask for is not such partial relief, but the removal of an invidious and illogical differentiation between the States which pay tribute and the far larger number which make no such payment.

On these grounds, My Lord, I appeal to the Committee to look at the matter from a broad and statesmanlike standpoint and to enable Mysore, and indeed all the States concerned, to enter the Federation on terms of honourable equality with other Units.

Sir Tej Bahadur Sapru: I want to know what Sir Mirza Ismail's suggestion is—whether he wants the abolition of this contribution as recommended by the sub-Committee—the 5 per cent. or something like that—immediately, or whether he suggests that something else should be done having regard to the present financial position of the country—something less than 5 per cent.

Sir Muhammad Shafi: Say 3 per cent.

Sir Tej Bahadur Sapru: Or whatever it may be.

Sir Mirza Ismail: I am pleading for its total abolition on grounds of justice.

Sir Tej Bahadur Sapru: But you will be satisfied with something less?

Lord Peel: We are offering him something less, Sir Tej.

(*The Committee adjourned at 1 p.m. and resumed at 2-30 p.m.*)

H.H. The Maharaja of Bikaner: My Lord Chancellor, I did not intend to participate in this debate, but in the light of the discussions which have taken place to-day and yesterday—when I am sorry to say I was not present—perhaps I may be permitted to invite attention to one or two matters which, I hope, may help to elucidate certain points on which there is a certain amount of misgiving.

Like His Highness the Chancellor, I do not lay claim to be a financial expert, or anything of the sort; but I do entirely subscribe to, and share, the views expressed by His Highness of Bhopal when

he said that the States have co-operated, and are desirous of co-operating, in a spirit of genuine sympathy in regard to federation. May I be permitted to add that my faith in federation still remains unshaken as being the best solution and ideal for India, British India and the States; and, as I have repeatedly said—" Federation with honour and safety to the States " is a motto to which personally I also very strongly subscribe.

Before proceeding further, may I say that, although I was absent yesterday—with your permission and that of His Highness the Chancellor—I took the opportunity of going through the proceedings last night and of reading the views which Sir Akbar Hydari has put forward on behalf of our States Delegation. I wish to state that there is really no change in the position of the States as regards their willingness to enter Federation with reasonable safeguards. I also wish to assure you all—every one in this Committee—that we of the States Delegation are not shifting our ground or demanding impossible terms as regards the States consent as to the conditions precedent to their entering the Federation. I was very glad, after our Finance sub-Committee met the other day, to hear from a British Indian friend exprssions of his gratification at the attitude of the States in that Finance sub-Committee; and I told him that, so far as the States were concerned, I was sure he would find us all along reasonable, as I was sure we would find our British Indian friends reasonable.

Now, about the point that has been raised by Sir Akbar Hydari, I think there has been, as he himself has said to-day, a certain amount of genuine misunderstanding which it would do no harm to clear up by further reiterating a point or two. The proposed Expert Committee is really intended to deal with two—I will not say separate, but two—specific kinds of cases or matters. The one is that which deals with and settles the principles, and the essential conditions, so far as Federal finance and matters relating thereto are concerned. The other is what has been stated as regards the claims for purposes of adjustment and relief to certain States, such as ceded areas, and so on. I think, Sir, that we have to clear our minds on these two points a little more. I am quite sure that Sir Akbar Hydari would be the last to suggest—he miself has said that he does not want things to go on till the Greek Kalends—but I think a moment's consideration will show that, as far as the broad principles and essential details and safeguards relating to federation are concerned, it is absolutely natural and clear that, before any State goes in for federation it must know the essential conditions and details, as well as its obligations and liabilities—call it what you like—as regards Federal finance; and that is a point on which I do not think there is any disagreement—certainly not on this side. And I do not think, really, that there would be, after a moment's consideration, any difference of opinion on the other side —because the States' expression of their willingness to enter, or to consider entering into, federation, was obviously subject to certain safeguards.

Before I proceed further, may I here, in this connection, ask to be permitted to quote from a speech which I made on the 8th January last in this Committee; page 561. I first of all invited attention to the fact that, early in the proceedings of this Committee, I raised the question of appointing a Financial sub-Committee. I did not press the point, on Sir Bhupendra Nath Mitra's pointing out that such an enquiry would take a very long time and that we should have to prolong our stay here indefinitely. But I also said that:—

> "If we have not raised this point again during our deliberations, the States have nevertheless certain very definite grievances and questions to raise as regards the manner in which they have been affected in the past."

His Highness of Bhopal, our Chancellor, has himself to-day pointed out the change of attitude of the States as regards certain financial matters as the outcome of our discussing this question of Federation. In that connection I went on, in my speech on the 8th January, to use the following words:—

> "Federation has undoubtedly changed the position somewhat, and the States will have to consider finally whether and what claims they are to put forward, or what other proposals for an equitable adjustment and satisfaction of the rights of the States in regard to the various issues they have raised, such as those relating to Sea Customs, Railways, Currency and Coinage, Posts and Telegraphs, double Income-tax, and so on."

I hope that we shall be credited with having approached this matter, not only with sympathy, but with generosity. Perhaps, in the same connection, I may read out the next paragraph of that same speech:—

> "Perhaps these matters will have to be gone into very fully and very impartially, and the terms of reference for such an enquiry will have to be drawn up in consultation with the States. Before final details and Treaties and agreements regarding Federation can be entered into by the States, I think when other details are being worked out a Committee will have to be appointed to examine these matters, consisting of representatives of the Crown, of the States and of British India, and of experts. In this connection the question of the contributions of the States and other matters, both direct and indirect, such as ceded areas, will also have to be considered."

Then I went on to invite attention to the remarks of Sir Mirza Ismail regarding tributes and certain other matters. So I submit that there is really neither any change as regards the attitude of the States nor is there any lukewarmness on our part.

But may I invite attention to a further point. The position of the States Delegation will be appreciated when I say that it has

already been stated that the Princes and Ministers last year did not understand the implications of federation when they took a plunge into the dark. I submit that we did not take a plunge in the dark. We did understand the implications of federation, and we spoke with our eyes very clearly open. There have been other objections. It has been said that we did not understand the implications of federation. But in regard to financial matters, though some principles have undoubtedly been worked out and brought out very clearly in this sub-Committee, the time, as Lord Peel said yesterday, has really been very short for a thorough examination of all these questions. To make it clear that no one is not understanding the implications of federation, it will be obvious that, as each State has to enter individually into federation, and as each State cannot be forced to come in and must know what the completed picture is, an essential part of that picture will also be Federal finance. It is on that ground that Sir Akbar Hydari pointed out that we should have to deal with the situation. I am not going into the question—about which I do not understand very much—of plus and minus; but there are certain parts of the matter which may take some time. What I do submit is that, before the States are in a position—before the picture is complete, let us say—for them to judge entering the Federation, it will really be necessary to see the broad principles finally settled; and I believe that, in the sub-Committee, it was said that the Expert Committee would have the power of reviewing things on such later information, as Sir Akbar Hydari has brought out to-day. Therefore, together with the question of the Chamber of Princes having a voice in the matter, and together with the Treaties with the Crown, we will have to know what are the principles of Federal finance.

I submit that it should not take long. There is no question of the Greek Kalends, or anything like that. You will have to have certain enquiries, even in British India, with regard to franchise questions and so on, and they are sure to take a short time—it may be a year or it may be less. If, as we hope, things are settled satisfactorily here so far as the States are concerned, I do not see why, immediately after the Round Table Conference comes to an end here, some such Expert Committee should not be appointed. Personally, I am inclined to think the Committee will have to be appointed in India, because we have not all the material here and it will take a good deal of patient work to prepare it. I think you will have to have a Committee like this, and that is the time when we will finally settle the principles. The minor details could be worked out later. I hope it is understood that we are not going back on anything. To carry things with the States, however, some such investigation will be necessary.

I am not a believer always in the principle of *festina lente*, but I do think sometimes the longest way round is the shortest way home; and, if we are going to get the support of a large number of States, these broad principles should be the subject of investigation, and an enquiry with regard to Federal finance should be undertaken

as quickly as possible, so that the States may have the misgivings, which I know exist in their minds, removed. I am confident it will therefore lead to a larger number of States agreeing to enter Federation, which is what I myself desire and what we all desire.

Mr. Gandhi: My Lord Chancellor and friends, I have to tender my apology for intervening in this debate. It was my intention to request you to give me a few minutes at the end of this discussion for making a few brief remarks, but, as I listened to the discussion yesterday, I thought I might be able to make a suggestion which might remove the difficulty with which this Committee had to contend. I became more convinced than ever of this when Mr. Jinnah presented his difficulty, and therefore it was that I requested you, Lord Chancellor, with apologies to Dr. Shafa'at Ahmad, to let me intervene and make a few remarks. I want to do so with a view to saving time if possible.

Before I proceed with my suggestion, I should like to tender my congratulations to Lord Peel's sub-Committee upon their labours and upon the exhaustive Report they have given to us. I feel, however, that the sub-Committee aimed too high, and hence, quite unconsciously, threw an apple of discord in our midst. The reference is clearly to examine and report upon the general principles upon which the financial resources and obligations of India should be apportioned between the Federation, etc. Well, in my humble opinion, if the sub-Committee had not aimed too high it could have presented us with a definite scheme. I sympathise with Mr. Jinnah's objection; but at the root of his objection is, I believe, a misunderstanding of Sir Tej Bahadur Sapru's presentation of his case—that is to say, if I have understood him correctly. Mr. Jinnah's objection is that, unless there was some sort of a scheme, there could be no Federation whatsoever. I think that that would be a fatal objection if it was true. If I have understood Sir Tej Sapru's contention correctly, it is that there should be a scheme, but that there might be, or should be, an Expert Committee to be brought into being by the Federal Government, if it ever comes into being, which could examine the whole question *de novo*, and present that Government with an exhaustive report. Naturally that report could be shelved, could be torn to pieces, examined by all the parties, and if it commended itself to them it could be then adopted by the Federal Government. There was no question of embodying that report in any constitution. The Constitution would have been framed before the Federal Government came into being. I personally confess that I do not envisage a constitution, to be framed by the greatest Parliament of the world, that would make us risk-proof and difficulties-proof. I believe that this Federal Government, if it comes into being, would be faced even in the very beginning with many difficulties with which it would have manfully to struggle; but I feel that it is not beyond the powers of this sub-Committee to give us an elementary scheme about which all parties are agreed. I do not mind how humble that scheme is, but it should be a scheme which would commend itself to the States. Let the States them-

selves decide, in consultation with the other members of this Conference, as to how far they are willing to go.

Let me illustrate what I am saying. Here, as they have started with a mention of the natural difficulties that they have to contend against, the whole of this Report is a tentative Report and for its finality it depends upon these two Expert Committees which have been suggested by the sub-Committee. What I feel is that, just as they have said in paragraph 10 that so many heads are marked "Federal," if they could sit again, and if this Report was referred back to them, they would then come, not with a tentative suggestion, but with an agreed suggestion that so many items of revenue would be Federal. Even if there was an Expert Committee appointed we would certainly not get absolutely accurate figures. Absolutely accurate figures can only be had after the event has happened—after the revenues have been collected—but we should have something to go by. I venture to suggest that such a thing is not necessary for our purpose before we can come to an agreement as to what items shall be or shall not be considered to be Federal; and so I simply take up these items and I say, let them concentrate upon these items to the exclusion of everything else and say definitely, "Yes, External Customs, including Export duties, shall be Federal" or "shall not be Federal." Then they would know immediately what are the sources of revenue. Similarly, let them sit together and say, "These will be the obligations that shall be Federal," and let the States decide for themselves. After all, it is they who are invited to come, or who have volunteered to come. I welcome gratefully the assurance given by His Highness of Bhopal, as also by His Highness of Bikaner. My sympathies are entirely with Sir Akbar Hydari when he says that he cannot possibly, either on behalf of Hyderabad or on behalf of the States Delegation, take a leap in the dark. Let there, therefore, be no leap in the dark; and, in order to avoid such a catastrophe, let there be just now a very humble scheme of participation, and let us launch that humble scheme. Then it would be open to the Federal Government—and there should be sufficient elasticity, for which His Highness of Bhopal pleaded, in the constitution itself to enable the Federal Government and the Federal Parliament—to take on what burdens they chose to take on. We do not want a cast-iron constitution, out of which we can never get, or to which we may never make any addition or amendment. If we have an elastic constitution, then it will be open to the Federal Government, as it gains experience, to appoint, not one Expert Committee, but ten Expert Committees to examine many things; and then the Federal Government, as it begins its march, will shoulder further responsibilities, and as it proceeds to shoulder responsibilities it will also have further avenues of revenue to be derived from various sources. If once the thing is launched, I anticipate no difficulty and no trouble of any kind whatsoever.

Therefore my concrete suggestion, if it commends itself to you, is that we refer this Report back to the sub-Committee with thanks.

and ask the sub-Committee, with the material at its disposal, to give us a minimum scheme to which the States agree; and that we accept that scheme as a scheme to start with, without any encumbrance in the shape of Expert Committees. If we do that, we meet entirely Mr. Jinnah's objection, I think. We meet also the legitimate fears of Sir Akbar Hydari; and, what is more to the point for a man like me, we waste no more time even on a matter which is of importance. I must confess to you that I dread a committee which might report in twelve months' time or even in three months' time or even in one month's time or three weeks' time. I think that this Conference has been called upon to shoulder a particular burden. It should manfully shoulder that burden and not throw responsibilities upon any further committees. Whatever we can hammer into shape we should present to His Majesty's Government, to the Parliament, and to the people of India also; but I think that, unless we approach the task in this manner, so far as I can see, we shall certainly never see light out of what appears to me to be impenetrable darkness at the present moment.

That really is the reason why I have intervened. I think that I have sufficiently explained the suggestion that I have ventured to place before this Committee.

Dr. Shafa'at Ahmad Khan : I should like to thank Mahatma Gandhi for his very lucid and clear speech on the Federal Finance sub-Committee. It is difficult for me to make any remark regarding the proposal he has just made, and I think that the members of the States Delegation should first express their views. So far as I am concerned, I think Lord Peel will agree with me when I say that we explored all the fields with the greatest care. What we felt, My Lord, was that we had no sufficient material before us. We had also the question of overhauling the existing resources for the Provinces and for the Centre. I should be prepared to consider the proposal after I hear what the States Delegation say and what the leading members on this side also say.

While I was following the discussion yesterday, I felt that there was a danger of the idea of Federation disappearing from our view altogether. There were moments when the greater scheme which the Committee had propounded and discussed seemed to be disappearing in a cloud of mist. But to-day the position has been greatly improved. I feel confident that, after the speeches of the Chancellor of the Chamber of Princes, of His Highness of Bikaner, of Sir Akbar Hydari, and, lastly, of Mahatma Gandhi, the idea of Federation will be successful, and that we shall be able to evolve a scheme which will be satisfactory to the Princes and to the interests of British India.

As a member of the Federal Finance sub-Committee, I must place on record our deep debt of gratitude to our Chairman, Lord Peel, for the tact, the patience, and the skill with which he presided over our deliberations. Only those who have had the privilege of working with him on that sub-Committee can know with what great ability he piloted those contentious and controversial measures

through. When we sat round the table and discussed various controversial points with our brethren from the Indian States, we did so in a spirit of compromise, of sweet reasonableness and of give and take. We did not act as ambassadors from rival and hostile powers; we felt that we were dealing with a very difficult and complex problem which will affect millions for generations, and we therefore acted in the spirit of brothers, the elder brother from British India meeting the younger brother from the Indian States.

Therefore, though there may be—and I think there are—some paragraphs to which objection may be taken either on the one side or the other, I submit, Lord Chancellor, that the Report must be taken as a whole and treated as a whole, and that you cannot pick out a passage here or a passage there and say "This is bad, this is unworkable," and so on. If you treat it as a whole, you will find that the main problems with which Federal India will be faced have been settled in an eminently practical manner—in a manner which will be really satisfactory to both sides, to the Princes' side and the British Indian side.

The Report of the sub-Committee is consequently essentially the result of a compromise, a compromise on the side of British India and a compromise on the side of the Indian States; and here I should like to place on record the great reasonableness and the spirit of give-and-take which the representatives from the Indian States displayed in the sub-Committee. After hearing the speeches to-day, I am convinced that the Federation is not in danger. I am no less convinced that the financial scheme which we have sketched in our Report is substantially the foundation of our future Federation.

I will now, with your permission, Lord Chancellor, deal with the two points which have been raised yesterday and to-day. The first point to which I wish to refer is the point which my esteemed friend, Sir Tej Bahadur Sapru, dealt with to-day and referred to yesterday. He mentioned the lack of any provision in the Report of the sub-Committee for what he called the interim period, and he pointed out that the sub-Committee has made no provision for an interim period; and he then referred to the relevant section of the South African Constitution. In my humble opinion, there is no need for what is called an interim period. An interim period has not been provided for in every constitution. There are constitutions where no interim period, in the sense in which that term was employed by Sir Tej Bahadur Sapru, has been provided. Take the Government of India Act of 1919. That Act was passed in 1919, but the important sections of it were not brought into force until a number of rules had been framed regarding the composition of the Legislature, the franchise, financial relations and so on. The mere fact that an Act is passed ought not to mean that it must be brought into immediate operation. As a matter of fact, in the Australian Constitution, there is a section which lays down that the Constitution will be brought into force a year after; and during that year apparently it contemplated the completion of arrangements for the

transfer of power from the old government to the new government. There are other constitutions where an interval is provided for the transfer of power from one government to the new. Consequently, it is not necessary, I submit, that an interim period should invariably be provided for in any constitution that we may frame here. Could we not go on, as we have gone on for years, with the present constitution of the Government of India until our arrangements for the new one are complete? If we have been able to carry on for a number of years, surely we can carry on for another year or two; and during this interval we could appoint an Expert Committee, and that Expert Committee could complete its enquiry within, I hope, a comparatively short time, and the results of the enquiry could be embodied in the Constitution itself. So, My Lord, an interim period is not absolutely essential.

Another point was raised by my friend. He said that the Federation should be started immediately, and an Expert Committee should be appointed by the Federation. I am very sorry to say I do not agree with this view. I believe that it is impossible to have Federation until and unless we know beforehand the Units which are willing to come into the Federation; and the Units will not express their readiness to come into the Federation until they know what their financial position is going to be in the new Federation. Therefore, I if may say so with very great respect to Sir Tej, we are placing the cart before the horse.

Sir Tej Bahadur Sapru : May I ask you whether, in what you said yesterday, you were placing the cart before the horse? Were you placing the cart before the horse when you put this question in the course of the discussion?—

> "*Sir Maneckjee Dadabhoy :* Unless Sir Akbar Hydari has changed his mind, my impression is that Colonel Haksar agreed to the suggestion that we should go into the Federation at once, and an enquiry was to be started afterwards.
>
> *Sir Akbar Hydari :* No, I do not think that is so.
>
> *Sir Shafa'at Ahmad Khan :* I put that question myself, My Lord."

Sir Maneckjee Dadabhoy : My Lord, as this refers to me, will you allow me to reply?

Sir Tej Bahadur Sapru : I do not impute any inconsistency to you, Sir Maneckjee.

Sir Maneckjee Dadabhoy : I did put that question, yesterday, and I must confess that I was under a misapprehension. I confused two items of importance. I felt, after that, that I had done Sir Akbar Hydari some injustice in the matter by putting him that question. I confess that my misunderstanding was owing to the fact that there were other questions, like cession of territory, for which compensation was to be fixed. There was the question of tributes to be taken into consideration. There were other local matters affecting the States to be taken into consideration; and we

had come to a conclusion in respect of those matters that they could be properly deferred as they would take years probably, to decide. But, as regards the stage at which the Federation should come into existence, I am now to-day, after hearing the Princes and the States, entirely in agreement with Dr. Shafa'at, and I say it would be impossible to expect the Princes to give their adhesion or consent, in all fairness and justice, at this stage, as to whether they should come immediately into Federation or not.

Sir Muhammad Shafi : We are not here to score debating points. We are here to discuss important problems on their merits. The question is, can any Unit of this proposed Federation agree to come into the Federation without first knowing what its financial obligations will be?

Sir Maneckjee Dadabhoy : That position was made perfectly clear this morning by His Highness The Maharaja of Bikaner. He distinctly stated " We must know our liabilities and our obligations."

Chairman : I think you are quite right, Sir Maneckjee. I think what happened was that there was a misunderstanding yesterday afternoon. I confess that I did not follow it at first; I was confused with two Committees.

Sir Maneckjee Dadabhoy: And I am responsible for that mistake, Sir. I am sorry.

Dr. Shafa'at Ahmad Khan : I would only say this much as regards the question that has been put, that I merely asked Colonel Haksar that question in the Finance sub-Committee to be clear on a crucial point. If I put a question, of course, it does not mean that I agree with the policy implied in the question. I merely asked if the Indian States will come into the Federation before or after the Expert Committee. That is all, nothing more; so that the question which has just been put by Sir Tej Bahadur Sapru is, I submit, irrelevant to the issue before us.

My Lord Chancellor, I was dealing with the question of federation on the basis propounded by Sir Tej Bahadur Sapru. I submit that, if his proposal is carried into effect, there will not be a federation in the true sense of the term. For what does federation imply? It implies the aggregation of constituent elements. The constituent elements must be there before they can combine into a federation; and how can you have any constituent elements if the latter do not know what their fate is going to be in the new constitution? They cannot come in until they know what it will be. Until they know the financial liabilities—the credit and debit side of the account—they will not enter; and if they do not enter, where is the federation? I submit that the States must know their position financially before they come into the federation, and I think that is a proposition that has been accepted and carried out in constitutions practically all over the world. Sir Tej Bahadur Sapru referred to Australia. The independent, Sovereign States of Australia carried on negotiations on this same financial question for nearly thirty

years, and did not come into federation until they had been completely satisfied with the economic position assigned to them in the new federation. The Union of South Africa would never have been an accomplished fact until the constituent units had been guaranteed financial security. A federation in modern times implies community of economic interest. Federation is brought about when the economic interests of the constituent units have been safeguarded. For these reasons, is it unreasonable if the States insist on seeing what the financial conditions will be before they enter the Federation? I am very sorry, therefore, that I cannot agree with the proposal of Sir Tej Bahadur Sapru.

There is another reason. The Indian States have their Treaties with the Crown; and, if federation is going to be brought into being, then they will not surrender their rights to the federation direct—they will surrender part of their sovereignty to the Crown, and the Crown will place those rights at the disposal of the federation. Therefore if the Indian States wish to come into the federation, and if they say they can only surrender some of the rights to the Crown, I am afraid that no person or no party can make them do otherwise. For these reasons I think it is essential that the wishes of the States should be taken into account.

There need not be considerable delay in the appointment of an Expert Committee. The Expert Committee need not be given the task of dealing with all the problems or replying to questions involved in this. On the contrary, a number of important and fundamental questions may be referred to it, and the historical and other portions of the matter may be dealt with later.

Sir Maneckjee Dadabhoy : That would be by the second Committee.

Dr. Shafa'at Ahmad Khan : The Expert Committee could complete its work in about six months' time if other questions, such as those of the Maritime Customs and so on, are eliminated and relegated to a different Committee. During those six months, if the financial principles of new federation are agreed to, work could go on in British India on the lines which were followed in 1919. The franchise proposals will also have to be carried out. There is an enormous amount of other kinds of work to be done, and there is no reason why all these details should not be ready within one year.

Mr. Jayakar : May I ask a question? Is it suggested that there should be a third Conference in London to arrive at this arrangement?

Dr. Shafa'at Ahmad Khan : I am suggesting nothing of the kind.

Mr. Jayakar : How would the final arrangement be arrived at? In India?

Dr. Shafa'at Ahmad Khan : In India, of course. Therefore, I feel that the best course would be to appoint an Expert Committee

immediately after this Conference has finished its work, and it would be an instruction to that Committee to complete its task, say, within six months. Only those questions or problems would be referred to it which are capable of immediate solution. Other problems, such as those relating to the Maritime States and so on, which might take a long time, could be entrusted to another committee later on.

Then the other point which was raised by Sir Tej Bahadur Sapru was with regard to the body which will appoint this Committee. For the reasons given by me in my speech, I believe the proper body will be the Crown. The Crown should appoint the Committee after this Conference is over. After the Report of the Committee has been published, it should be circulated to the Indian States, and after agreement has been arrived at on the important issues raised——

Mr. Iyengar : How is the agreement to be arrived at?

Dr. Shafa'at Ahmad Khan : We can meet in India. That is certainly possible.

Mr. Jayakar : What about the Treaty rights of the Crown? Where would agreement be arrived at with regard to that, in England or in India? You referred to some Treaty rights: will agreement with regard to them be arrived at in India?

Dr. Shafa'at Ahmad Khan : Is it necessary, if certain portions of Treaty rights are to be surrendered, that it should all be done in London?

Mr. Jayakar : That is what I am asking you.

Sir Muhammad Shafi : Cannot the Secretary of State for India go out to India, instead of a hundred people coming here?

Dr. Shafa'at Ahmad Khan : I am simply pointing out that this could be done in India; it is not absolutely essential that every Prince should come here in order to surrender Treaty rights.

Sir Tej Bahadur Sapru : May I know—I expect Lord Peel can tell us—whether the question of Treaty rights and their surrender was gone into at all by the sub-Committee?

Lord Peel : We did not go into that particular problem.

Sir Tej Bahadur Sapru : It has been referred to by the learned speaker, but I gather it was not considered by the sub-Committee, nor was it raised by any one of the representatives of the Indian States.

Lord Peel : I think it was hardly within our competence, Sir Tej. I think, if it had been raised, I might possibly have had to say that it was outside our range.

Sir Maneckjee Dadabhoy : But even now, how are these questions about these Treaties settled?

Mr. Iyengar : That is a general issue.

Sir Maneckjee Dadabhoy : Questions concerning the interpretation of the Treaties are now settled by the Viceroy in consultation with the Secretary of State.

Sir Muhammad Shafi : It is not necessary for the Princes to come here.

Sir Maneckjee Dadabhoy : That is what I am saying. It is being done now. With regard to these important Treaties, there are constant disputes about the interpretation of certain rights which are claimed by the Indian States, and the Viceroy has very often to interpret those Treaties with the assistance of his Political Department; and generally he consults the Secretary of State for India before he issues final orders on all important matters. It can be done in the same way. Even now it is not necessary for the Princes to come to England to settle questions of interpretation or explanation regarding any Treaty or any clause in any Treaty which is in dispute.

Sir Muhammad Shafi : Is it, or is it not, a fact that the late Mr. Montagu went out to India during the period of the Great War in order to make investigations in connection with the Montagu-Chelmsford Reforms?

Sir Tej Bahadur Sapru : May I also put a question? Can anyone, either on the side of the Government or on any side, give us an assurance that the Government are prepared to send out a deputation?

Sir Samuel Hoare : I think obviously that is a question we could not answer here. I should have thought it was a matter of commonsense that obviously there must be enquiries of this kind. The finance enquiry is only one of a whole series of enquiries, and I do not in the least regard the finance enquiry as in a different category from any of these others.

Mr. Iyengar : Yes. The question is, what about the constitution?

Dr. Shafa'at Ahmad Khan : I was merely pointing out that there will be a constitutional difficulty if an Act is passed now, and the Federation is started, and then the Expert Enquiry Committee is appointed later on. I believe the best plan would be to appoint an Expert Enquiry Committee immediately after the Round Table Conference is over—immediately after the work of this Conference is finished—with instructions to complete its work within a certain time, say, six months; and later on we could meet again in India and discuss the various proposals embodied in that Report and come to an agreement.

Mr. Iyengar : You do not mean to say that this was the idea we had in mind when we framed the Report of the sub-Committee?

Dr. Shafa'at Ahmad Khan : The proposal I am making is quite consistent with the recommendation of the Finance sub-Committee. We did not discuss it at all.

Mr. Iyengar : That is sufficient.

Dr. Shafa'at Ahmad Khan : I believe, Lord Chancellor, that this is the only method whereby we can carry out the recommendations of the Finance sub-Committee.

The other point which was referred to was the question of representation of different interests in the Committee. I entirely agree with the recommendation of the sub-Committee that there should be an Expert Enquiry Committee. It should not contain representatives, as such, either of the Indian States or of British India; but that does not mean that the persons appointed to that Committee should not have the confidence of either side. Indeed, it is quite possible that those experts who may be appointed may have the confidence both of the Princes and of British India. They should be selected in consultation with both parties, and the personnel should be approved after both parties have agreed. I cannot support, therefore, the proposal made for the representation of various interests on that Committee. I believe that impartiality is absolutely essential in a Committee like this, and I believe equally strongly that no member of such a Committee should be directly interested either in British India, as such, or in Indian India. For this reason I am a strong supporter of an Expert Enquiry Committee.

The last point to which I would refer is that of Income-tax. That point has been referred to by various speakers. I believe that Income-tax from various Provinces should form a common pool and should be collected at the Centre and administered from the Centre. The Provinces should get a portion of the proceeds in accordance with certain well-understood general principles—it might be *per capita* or it might be on some other basis. In any case, I am convinced that the poorer Provinces—the agricultural Provinces who have suffered considerably for the last seventy years—should have a share in the proceeds of the Income-tax, and they can have it only if there is a common pool and if the Centre distributes the amount in accordance with certain principles.

Dr. Ambedkar : My Lord Chancellor, we have heard the debate that has been going on for the last two days on the Report of the Finance sub-Committee, and I am afraid that the debate has become somewhat wearisome and tiresome. I should not have intervened in this debate at all if I had not found myself in disagreement with the majority of the recommendations made by the sub-Committee.

The first problem with which the sub-Committee has dealt is the problem of the division of resources between the Federal Government and the Units; and, in making the recommendation which the sub-Committee has made, it has proceeded upon certain principles applying to the division of resources as between the Federal Government and the Units. Those principles are referred to in paragraph 8 of the Report, and there it is suggested that a proper system of allocation of revenues between the Federal Government and the Units would be that " indirect " taxes should go to the Federal

Government and " direct " taxes should go to the Units. Now, that is a principle to which I venture to take exception; and the first thing that I would say is this, that this is something which has no foundation in precedent at all. I have examined with much care the constitutions of most of the federal governments, and I find that there is no authority for the principle which has been enunciated in paragraph 8 of the Finance sub-Committee's Report. Take, for instance, the Constitution of Canada, section 91 and section 92. There the scheme laid down is that the Provincial Governments in Canada are restricted to what are called " direct " taxes, but the Central Government is not restricted to " indirect " taxation. The liberty of the Central Government to have either a " direct " tax or an " indirect " tax is kept intact in Canada. If you take the Australian Constitution, sections 86, 69 and 90, you will see that the same result is arrived at, although by a different method. These sections provide that the States shall not levy Customs and Excise. Of course, from that if does not follow that the Central Government in Australia can levy only Customs and Excise. There again the liberty of the Central Government in Australia to levy " direct " taxation is preserved intact. The sub-Committee has made a reference to the fact that the system which it described in paragraph 8 of the Report prevailed in the United States until the 16th Amendment to the Constitution was passed in 1913. I beg respectfully to submit that that is an error. The United States Constitution, even at its very inception, never laid any limitation upon the power of the Central Government in the United States to levy " direct " taxation. If you refer to Article I, Section 2, of the United States Constitution, you will find distinct provisions stating that the Central Government in the United States shall have liberty to levy " direct " taxation. The only limitation that was put upon the authority of the Central Government in the United States to levy " direct " taxation was that " direct " taxation, if levied at all, was to be apportioned amongst the various States according to population. The only provision that was made by the Amendment of 1913 was that this limitation upon " direct " taxation on the part of the Central Government—namely, apportionment according to population—was abolished. But the right existed from the very start. Not only so, but it was exercised in 1864 by the United States, and also in 1894. The only country which had for some time a system, which was in accordance with the proposition enunciated by the Committee, was Switzerland. There the Central Government was entirely dependent upon " indirect " sources, while the Cantons had the power to levy " direct " taxation. But I do not suppose that any member of this Committee would really be so bold as to draw a moral from the experience of Switzerland for the purposes of the Indian Federation. There would be no purpose in comparing, if I may say so, chalk with cheese. And, even there, the Swiss Constitution had to give up this system in 1915 and permit the Central Government to levy " direct " taxation on the citizens of the State. Consequently, in so far as this proposition is going to serve as a direction to the

Expert Committee that is to be appointed, I am unable to give my concurrence to it.

Coming now to the actual division of resources proposed by the sub-Committee in paragraph 10, of course, the only test that would be applied to this allocation is the test of adequacy. Is the allocation made in paragraph 10 such as to give both to the Central Government and to the Units the necessary adequacy of revenue? Now, it is not possible to examine the scheme by that test, because—without meaning any offence to the sub-Committee—the Report is absolutely bare of the necessary Budget Estimates that one would have to have before oneself in order to say whether the allocation is adequate or not. The division seems to have been based on the assumption that the welfare functions are largely Provincial, and that therefore the Provinces must get expanding sources of revenue. That, of course, is true in the main; but, in so providing, it seems to me they have denied to the Federal Government both adequacy and elasticity in its fiscal system.

Take the revenue side of the proposals as contained in paragraph 10 of the Report of the sub-Committee. You have first of all Customs as a source of revenue. Now, there are various factors on which the Customs revenue would be dependent. First of all, it would be dependent upon trade prosperity or trade depression. In times of depression it is obvious that exports would be reduced, and also the consuming power of the people, and to that extent imports would also be reduced; and that would mean a direct reduction in the Customs revenue. Secondly, this source of revenue is largely dependent upon the particular kind of tariff policy that will be pursued in times to come. It may be that there may come into power in India a party which may believe in absolute protection, creating a dead wall against any imports of any sort from outside that are likely to compete with industry and products at home. If that happens—if imports are shut out by a policy of extreme protectionism—that would cut at the root of the Customs revenue. If, on the other hand, there comes a party in power which believes in free trade and no protection, that again will make the Customs revenue a very bare and slender source for the Federal Government to depend on.

And now, let us take the second source of revenue for the Federal Government—Opium. According to the Government of India's Despatch, page 54, I find the Government of India say that we shall lose all our revenue on Opium exports, which amounts to about 2 crores, but shall still retain a small sum of 10 or 15 lakhs from the sale of medical Opium. That shows how meagre is this source of revenue for the Federal Government.

The third source of revenue which has been assigned to the Federal Government by the sub-Committee is the Salt tax. Now, as we all know, this source has been a matter of contention and has been dragged into the vortex of Indian politics; and, if the Congress Party had its way, this tax would vanish altogether. Now, apart from the question of whether the Congress would succeed in

removing the tax altogether, it is absolutely certain that this tax, which is so intimately bound up with the standard of living of the ordinary masses of the people in India, can never be depended on to give a very large source of revenue to the Federal Government.

Lastly, you have the Corporation tax, which is suggested by the sub-Committee as a source of revenue for the Federal Government. I am informed that its yield is somewhere about 3 crores, so that obviously it is at the present moment a source of very small dimensions. It seems to me that, if we agree that industrialisation is a very important thing for the prosperity of India, and if we further agree that, for industrialisation, the incorporation of capital is also necessary, then I am afraid that we cannot increase this tax to any very large extent, for fear of penalising incorporation.

This is what I feel regarding the revenue side of the Budget. Coming to the expenditure side, the sub-Committee has proceeded upon the view that the Government at the Centre will have very little to do except to defend. I do not agree that that can be the view of the function of any government in modern times. There was a time in history when people thought that the proper function of a government was to provide for nothing but anarchy plus the constable; but I think we have changed. We believe that the government must provide the constable, but it must also provide welfare. It seems to me—this is my personal view, the view of other members may be different—that the Government at the Centre, for some time at any rate, will have to take upon itself certain welfare functions which to my mind are peculiar to India. I think, and I am going to propose elsewhere, that the Government at the Centre should take upon itself the burden of securing and helping, to some extent at any rate, the welfare of what we call the Depressed Classes. I want that the problem of the Depressed Classes, and the problem of removing Untouchability, should not hereafter be looked upon as a purely local or Provincial problem. I want that it should be looked upon as a national problem in which the whole of India is interested. I want the Government at the Centre to take upon itself the duty of bringing the jungle tribes, which number probably as many as the Depressed Classes themselves, within the pale of civilisation. I want that Government to take upon itself certain functions in respect of what are called the " backward tracts." In other words, my submission is that the Government at the Centre should take at least such welfare functions upon itself as will guarantee what I call the minimum of civilised life to every individual and to every community.

Then, again, there may be such afflictions as may affect the whole of India, or as may affect a particular Province and which yet may not be within the competence of that particular Province to deal with. Take, for instance, the curse of malaria. In some Provinces, it is a small malady. In some Provinces, I am told that it is eating into the vitals of the people. The Province may not be sufficiently strong, economically or financially speaking, to

eradicate it. It may have to be treated as a national problem, and to that extent the national government will have to take a welfare function upon itself.

Again, the sub-Committee does not seem to have taken into account the fact that, for certain peculiar reasons, apart from reasons which would be common to all the Provinces, the Federal Government may have to give certain subventions, for instance, subventions to the North West Frontier Province, for the peculiar burdens it may have to bear by reason of its special connection with Imperial problems. Similarly, new Provinces may come into being, and, in order that they may be sustained, the Federal Government may have to give them subventions.

Now, it seems to me that, if you take a broad view of the expenditure side, as I have tried to explain, and compare it with the revenue side as is proposed in this sub-Committee's Report, it would not be at all an exaggeration if I said that the fiscal system which is adumbrated for the purposes of the Federal Government will be such as will enable it to keep its nose just above the water in ordinary times; and even that may not be so. What is absolutely certain is that, with any gust of adverse wind, it will sink.

Now, take the provisions suggested by the sub-Committee in paragraph 21 regarding emergency—I ought to say grave emergency. Now, the recommendation made by the sub-Committee is that the Federal Government should have power to call for contributions from all the Units of the Federation. The question that arises in my mind is, is this a safe and a sure method? Is this a method which would be a dependable method in all circumstances? As regards the willingness of the Provinces to pay contributions in a grave emergency to the Federal Government, a view was expressed yesterday by an esteemed colleague. He said that, if the Provinces were to help the Federal Government in a grave emergency with contributions, then the Provinces should have the discretion in determining whether an emergency has arisen or not. Now, I do not think that that is a view that will be accepted by all; but that view is surely indicative of one thing—namely, that the Provinces will not be willing co-operators in meeting the deficit of the Federal Government in an emergency that may arise. Could the States be depended upon to meet their share of the contribution in an emergency? I have raised that question, but I do not know that I should give the answer. In any case it seems to me that it is not a dependable method. As to the solvency of the Provinces, we can be more or less certain. About the solvency of the States in an emergency, for emergency purposes, I, for one, could not be certain of that. Therefore, My Lord Chancellor, my conclusion is that, for the purposes of adequacy, for purposes of elasticity and emergency, the best course would be to widen and broaden the basis of the financial system of the Federal Government. Therefore, my proposal would be that the Income-tax should be treated as a common source of revenue both for the Federal Government and for the Provincial Governments, so that

each Government will have the inherent right and authority to tap that source, whenever there is any necessity for it, without having to depend upon such contributions as are contemplated in paragraph 21.

Now, while I am dealing with this, I should like also to make certain observations as to the method of sharing this Income-tax. Before I do so, let me enunciate two propositions. The first is that, in any allocation that we may ultimately agree upon between the Federal Government and the Units—I am speaking particularly of the Provinces of British India—we should so contrive matters that the Provincial finance shall be a self-contained system not dependent upon doles or upon contributions. Secondly, I should so contrive the Provincial system of finance that it would not be destructive of that sense of responsibility which every Executive must feel towards its Legislature.

Chairman : Do I rightly interpret your remarks, that it would be most important to get all the Provincial matters into order as soon as possible? I quite agree with your laying down a canon with regard to Provincial finance, and I gather you mean that all these Provincial questions should be settled as soon as possible.

Dr. Ambedkar : They should be. My submission, following these two proposition, is that I would not approve of such a division of the Income-tax as would permit the Federal Government to fix the rate of taxation and to divide the yield between the Provinces and itself. I would allocate the basis of taxation, one base to the Federal Government, and another to the Provincial Government. I want the system recommended by the Taxation Enquiry Committee introduced so far as the division of the Income-tax is concerned. I should allocate " personal income " to the Provinces, and the rest of it to the Federal Government, and the rate on " personal income " should be fixed by each Province, and not by the Federal Government, according to its own necessity.

(The Committee adjourned at 4-10 p.m.).

PROCEEDINGS OF THE THIRTY-FIFTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 15TH OCTOBER 1931, AT 11 A.M.

HEAD 4.

Distribution of Financial Resources between the Federation and its Units.

DISCUSSION ON THE REPORT OF THE FEDERAL FINANCE SUB-COMMITTEE—*(continued)*.

Dr. Ambedkar: My Lord Chancellor, yesterday I pointed out that the fiscal system devised by the sub-Committee for the Federal Government appeared to me to be inadequate and inelastic, that it

was not equal to the strain which was likely to be put upon it by reason of any emergency, and that it was necessary therefore to alter the allocation of the revenues proposed by the sub-Committee by making the Income-tax a common source of revenue for both. I also said that, in devising a scheme of allocation of resources, two propositions ought to be kept in mind. One was that the system of finance, whether Federal or Provincial, should be autonomous and self-sufficing; and, secondly, that it must not impair the sense of responsibility which the Executive must bear towards the Legislature. It will be obvious that those subventions or contributions are inconsistent with an autonomous and self-contained system of finance. They are bound to impair the sense of responsibility in the Executive towards the Legislature, and they are likely to make the Legislature indifferent to the Executive. Power to refuse supplies, and power to refuse appropriation of supplies already secured from outside, are not equally efficacious methods of controlling the Executive and bringing it into conformity with the wishes of the Legislature. From this point of view, the problem of dividing sources of revenue becomes of immense importance. You may divide them in such a manner that the division will make each authority autonomous and self-sufficient, or you may divide them in such a manner that the fiscal system resulting therefrom would not be autonomous and could not be self-sufficient without adjustment by means of subventions and contributions.

In suggesting the particular method of dealing with the Income-tax as a joint head of revenue I have been guided largely by these considerations. There are two conceivable ways of dealing with the Income-tax as a joint source of revenue. First, you may adopt the method of what is called segregation of the source and division of the yield; and, secondly, you may adopt the method of apportionment or partition of the source and division of the yield. Under the first method, the fixing of the rate will be within the exclusive jurisdiction of one of the two authorities, and naturally of the Federal Government. The Provincial Authority will only be a sleeping partner entitled to receive a share in the total yield of the tax. Under the second, both will have equal jurisdiction to fix their respective rates of Income-tax. A Province will fix its own Income-tax rate, to be operative within the Province; the Federation will fix an Income-tax rate, to be operative throughout the Units of the Federation. On the basis that the administration and the collection of the Income-tax shall continue to be a Federal subject of administration, my view is that the second method ought to be adopted as the means of allocating the revenue. This would not be very different from the system which prevails in France, Belgium and various other European countries, and is known as the system of the *centimes additionels* applied as between the provincial and the local authority. Under this scheme there will be two Income-tax rates: (1) a Federal rate, fixed by the Federal Government from time to time according to its needs; (2) a Provincial rate, fixed by the Provincial Governments from time to time according

to the financial requirements of each. The tax as a whole will continue, as now, to be administered and collected by the Federal Government.

The advantages of this plan are obvious. First, it will do away with the system of doles and contributions and will help to make the financial system of each Unit autonomous and self-sufficient. Secondly, it will maintain the sense of responsibility of the Executive by compelling it to obtain the consent of the Legislature for fixing its rate of Income-tax as a means of securing its supply. Thirdly—and this is very important, I think—one Province will not be taxed for the benefit of another. Under the other system of the segregation of the source, with its single Federal rate for all Provinces and a division of the yield, the amount raised in a Province will not necessarily be the same as its share in its distribution; some Provinces may be giving more and receiving less. For these Provinces, such a system will be nothing else but a disguised method of taxing one Province for the benefit of another.

Now, the only objection that can be taken to the method I am suggesting arises from those who insist upon a uniform rate of Income-tax as being necessary for trade and industry. Uniformity of rate is, of course, something which is very desirable; but it is easy to exaggerate the importance of it. India is as large as Europe. There is no uniformity of Income-tax rate in Europe, and yet trade and industry are going on as well as anywhere else. Why should it be otherwise in India? Then again, those who insist upon uniformity in the rate of Income-tax have to explain how they can reconcile themselves to facts, such as they exist, regarding the Land tax in India. There is no uniformity there at all. On the contrary there is a bewildering variety of rates of Land tax. In no two Provinces are the rates the same, nor is the system of taxation in any two Provinces alike. This objection, therefore, must not prevail against the method of treating the Income-tax which I have suggested with a view—with due respect to members of the sub-Committee—to improving the allocation they have recommended. It meets the needs of all concerned in normal as well as abnormal times.

There is one statement which I made yesterday which I would like to withdraw. I said that my plan was the plan recommended by the Taxation Enquiry Committee. That was a slip due to an error which had crept into the notes which I had made for this discussion. I ought to have said that they considered it; they did not recommend it, although they did not see any insuperable objection to it.

The next point relates to paragraph 12 of the sub-Committee's Report, where the problem of "residual powers" of taxation is dealt with. The sub-Committee has anticipated that the decision will be in favour of the residual powers being vested in the Provinces. They have made, on that basis, the recommendation that the power to levy unscheduled taxes should be in the hands of the

Units. The sub-Committee gives no reasons at all why it came to that conclusion, but there is a passage in paragraph 12 which states that the sub-Committee sees constitutional objections to making any other recommendation than the one that they have made. From this it follows that the sub-Committee's view is that, in any federation, the residual powers of taxation must reside in the Units. Now, my submission is that this is not a necessary consequence of federation at all. If you will refer to the Constitution of Canada, Section 91, paragraph 3, you will see that the powers of taxation given to the Central Government in Canada, which is admittedly a federal constitution, are not limited by any such proviso as enters into the recommendation of the sub-Committee. The paragraph I have just mentioned is the widest possible that can be conceived. It gives the most unlimited power that any central government can have in matters of taxation. But perhaps it might be suggested that I have taken a wrong example because, under the Constitution of Canada, the residual powers are with the Central Government and not with the Units. Let me take another example where the residual powers are left to the Units, namely, Australia. There the residual powers of taxation are not given to the Units but are left to the Federal Government. The Australian Constitution, Section 51, paragraph (ii), says that the Central Government shall have the power of taxation, but so as not to discriminate between States or parts of States. Now, that language again is the widest possible language that can be conceived; and it is even suggested that that power is so wide that the Federal Government in Australia can be said to have the power of controlling the taxation system of the States. Let me refer you to the Commentary by Moore on the Commonwealth of Australia, page 298 of the first edition, where this point is dealt with. This is what he says with respect to the extent of the power of taxation given to the Australian Federation:—

> "It has been seen that, on the establishment of the Commonwealth, the States are subject to the restriction, that they may not tax the property of the Commonwealth; that perhaps this extends to the 'instrumentalities of the Commonwealth;' and that, on the establishment of uniform duties of customs, they may no longer impose duties of customs or excise, nor put any tax upon inter-State trade, commerce or intercourse. Further, discriminations injuriously affecting British subjects resident in other States are inoperative."

What follows is very important:—

> "Finally, it has been suggested that the Commonwealth power to make laws with respect to 'Taxation' may give very extensive powers of regulating taxation by the States."

This is a constitution where the residuary powers lie with the States; yet, in financial matters, the residuary powers are not with

the States but with the Federal Government. Take the Constitution of the United States of America, Article I. There again, the residuary powers of legislation are with the States and not with the Federal Government, yet Section VIII of Article I of the United States Constitution provides:—

> "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

There again, you do not find any limitation whatever placed on the taxing powers of the Central Government in the United States. I therefore do not see any substantial reason, so far as constitutional law is concerned, for the kind of recommendation that the sub-Committee has made.

My further submission, however, is that this question of whether the residuary powers of taxation should be with the Federal Government, or whether the residuary powers should be with the Provinces, is an entirely artificial question which has arisen in no other country. And the reason why it has arisen in India is because we have somehow introduced in our Devolution Rules of the present day a silly system—if I may be permitted to say so—of what are called schedules of taxation. This did not exist anywhere else and was never prescribed by any government or any constitutional authority that drafted a federal constitution. We are somehow not only dividing the spheres of taxation, but we are, by having these schedules, prescribing the particular method by which, and the particular form in which, that power of taxation shall be exercised; I do not think that such a thing is at all necessary. First of all, it is going to stereotype the taxation system and is going to limit the ingenuity of future Chancellors of the Exchequer. I do not think that any Chancellor of the Exchequer would like to take upon himself the responsibility of managing a financial system in which his discretion was limited, not only in regard to his powers of taxation, but also in the choice of the particular taxes that he might levy.

My view, therefore, is that we should altogether delete from our constitution these schedules and simply divide the field of taxation by the method that is followed in other federal countries —by putting a simple limitation on the Provincial Governments that they shall not make use of Customs or such Excises as the Federal Government chooses to impose, and leave the rest of the field for both Governments to divide in the way they like. That is exactly what has been done, as I say, in other federal countries; and I do not think, therefore, that it is at all necessary to introduce this principle of residuary powers of taxation in our constitution.

The next point I propose to deal with is the position of the States in Federal finance. When I turned to this part of the

Report of the sub-Committee, the first thing I naturally tried to find out was what head of revenue has the Federal Government gained from the States as an addition to its financial resources. I find that there is no additional resource given to the Federal Government by the States. As to Customs, it is obvious that this revenue was never the revenue of the States—to which they had no claim, and under which, therefore, they have taken no additional burden upon themselves. As to Salt, it is a revenue the right to which is vested in the Indian Government and not in the States by reason of the purchase. As to Currency profits, they are due to the credit of British India. Regarding cash contributions and revenue of ceded territories, these have been the sources of the revenue of the Central Government, and would have been so even without federation. It is obvious, therefore, that the States, by entering into the Federation, have surrendered nothing to which they can be said to have any rights. The only contribution that I see that they are making is in the form of a military force for the defence of India. Looking at the figure mentioned in the Report of the Committee which was appointed by the Government of India, I find that the total expenditure of this military force incurred by the States to-day is a paltry sum of 2 crores and 38 lakhs.

Another thing which I looked for in the Report was the comparative treatment accorded to the Provinces and the States in respect of the financial burdens of the Federation. When I saw this, I came to the conclusion that the sub-Committee had thrown the principle of equality of burden to the winds. Just see how this inequality runs through the whole Report. First, the Provinces are to bear both the " direct " as well as the " indirect " taxes of the Federal Government. The States are to bear only " indirect " taxes. The Committee does not even insist upon their accepting the Corporation tax. Not only are they not to bear " direct " taxes, but they are to be relieved of such " direct " taxes as they do bear at present, such as tributes and cash contributions. Secondly, the Provinces are prohibited from levying internal Customs, but the States are allowed to retain intact their right to levy those Customs, although it is admitted by the sub-Committee that one of the objects of the Federation is to have freedom of commerce throughout the Federation, and although the Committee recognises that the continued maintenance of the right of the States to internal Customs is likely to impinge upon Federal receipts. Thirdly, the Provinces are required to pledge their revenues as a security for Federal loans; but the States, although they are to be Units of federation just as much as the Provinces, are to be free from the burden of this obligation.

One can quite understand the reasons for allowing the States the right to retain their internal Customs. One can see that, if they are compelled to take off internal Customs all at once, it will disarrange their financial stability. But one cannot understand why the sub-Committee should have allowed the States the freedom

from bearing direct burdens of the Federal Government, nor can one understand the reasons which led the sub-Committee to recommend that the States should not be required to pledge their revenues in support of Federal loans.

Now, Lord Chancellor, in ceremonial matters a discrimination between the Provinces and the States may be permitted. We may refuse to ourselves the honour of the salutes, and we may let the States have what they want in respect of that; but when it is a matter of the purse, I think we ought to follow the maxim that " business is business ". If British India is making a sacrifice in the interests of federation, it has an equal right to call upon all the other Units to make equal sacrifices in the interests of federation; and I therefore urge that the following amendments to this part of the Committee's Report be made:—

(1) That the States must accept the right of the Federal Government to " direct " taxation. Until this is done there should not be remission of cash contributions and no consideration of ceded territory.

(2) A time limit should be fixed within which the States should be required to abolish their internal Customs by an appropriate change in their fiscal system which shall not injuriously affect the fiscal system of the Federal Government.

(3) The States must be required to pledge their revenues as security for Federal loans.

That is all I have to say, Lord Chancellor, on this matter.

Mr. Iyengar: My Lord, I had hoped, when we of the Federal Finance sub-Committee presented a unanimous Report of the kind we made, that it would have been accepted and taken as the basis of the Federal Constitution Bill, with a more or less general debate conveying the observations of this Committee for the Plenary Meeting. I am free to confess, My Lord, that the actual wording of paragraph 4 of our Report and of our recommendations regarding the appointment of the Expert Committee have unfortunately introduced an element of doubt, which I, for one, believe was not in the mind of any one of us of the British Indian section on that sub-Committee. I feel, however, after what Dr. Shafa'at Ahmad Khan and Sir Maneckjee Dadabhoy said yesterday, as well as the day before yesterday, as to what we meant by our recommendations, that I should state my position clearly and that I should appeal to Their Highnesses and the other Indian States representatives—and in particular to Sir Akbar Hydari, without whose valuable and sympathetic lead we should not have been able to arrive at so many of our unanimous recommendations—to support the sound and wise suggestion of Mahatma Gandhi that we refer this Report back to the sub-Committee and ask it, with the material at its disposal, to give us a minimum scheme to start with. Those are the words of Mahatma Gandhi.

My Lord, it is now clear that the remission of the whole of our Report to the Expert Committee before the Federation is agreed upon or started will be to hang up the whole of the fundamental constitutional issues. This is a consummation which, I am sure, Their Highnesses would be the last to desire to bring about at this stage. Whether or not the South African parallel is complete, there can be no doubt—and it is common ground—that the second Expert Committee, or the second part of the expert enquiry, can come into being only after the Federation is established, and that certain complicated questions involved will have to be settled later. I find that, in our ambitious attempt to give a finished picture, we agreed to put even the agreed conclusions into the scope of the enquiry, and that thereby we have raised a difficulty not contemplated by us. I would therefore warn the sub-Committee or this Committee, if need be, to separate these agreed matters, and put them into shape, and so to start the Federation on its minimum basis, thus removing the difficulty of the financial scheme not being ready for immediate use. Shall we not recognise that, in regard to the first part, there is already sufficient agreement in general terms that can be laid down to-day after further scrutiny and consultation, and then put them in our recommendations for the drafting of the new constitution?

The general principles that are sufficient, it seems to me, to form the basis of the Federal Constitution on its financial side, have been agreed to by the sub-Committee unreservedly, no less by the representatives of the States than by those of British India, and they have commanded a wide measure of approval here also. I would set forth tentatively the propositions thus agreed to, and would submit that, if the sub-Committee can meet again and put them into shape, they could be the principles on which we could start. They may if necessary be even amplified or revised later by suitable provisions. The rest of the recommended principles that may require further elucidation may be settled, it seems to me, by the Federation itself.

We start on the assumption that the replacement of the present Government by the Federal Government is not to involve any disturbance of the existing position. That is laid down on page 4 of the Report. I would recast it in the following clause of the constitution, if an inexpert draftsman may do so:—

> "Parliament shall have power to levy taxes, or duties for imports in accordance with the allocation of resources hereinafter made as between the Federation and its Units—Provinces, States, and territories—save as hereinafter provided; and until Parliament shall otherwise provide in accordance with the procedure hereinafter laid down, the existing distribution of resources between the Federation and the various Units shall continue undisturbed."

Similarly we may provide on an agreed basis that there shall be paid, out of the revenues of the Federation, the interest and debt charges, subject to scrutiny and expert enquiry.

The next recommendation will be in regard to the allocation of the resources referred in paragraphs 8 to 10 of the Report. The revenues shall be from sources of Federal and Provincial taxation, the resources of the Indian States being specified or not, as the case may be, but with their present rates. I have made a proviso about the Corporation tax in accordance with the recommendation made; namely, provided the Corporation tax or any other tax that may be lawfully imposed by the Federation shall not be imposed on the Units until and after the enquiry hereinafter proposed establishes to the satisfaction of the Federal Parliament the necessity for such fresh taxation.

The other recommendations made are as follows:—

The constitutional right to levy any other unscheduled tax rests with the Provinces or the States as the case may be, subject to the condition that the levy of the tax does not conflict with the rights of the Federal Government to tax its resources.

Transit duties, whether in the Provinces or in the other federating Units, are hereby forbidden.

Internal Customs shall not be levied by any of the Provincial Units. The Indian States joining the Federation may continue the duties at present levied until such time as they are able to make arrangements, by finding other resources or otherwise, for their abolition.

No power of taxation or raising of revenue possessed by the Provincial Governments or States shall be exercised in such a manner as to conflict with the international obligations of the Federal Government under any Commercial Treaty or International Convention.

The property of the Federal Government shall be exempt from taxation for the purposes of Provincial or State Governments.

In cases of grave emergency and for the protection of the credit of the Federation, the Federal Government may, with the assent of the Federal Parliament, call for contributions from all Units of the Federation in the manner hereinafter to be agreed upon.

Sir Akbar Hydari: How is that worded?

Mr. Iyengar: " In the manner hereinafter to be agreed upon " or " as laid down by the Federal Parliament," whichever you prefer.

There shall be constituted, on the coming into operation of the Federation, a Federal Loans Board, for the purpose of advising on and regulating the borrowing operations of the Federation and the Provinces and such State Units as may desire to do so. The constitution and powers of the said Board shall be laid down by the Federal Parliament after the recommendations of the Expert Committee in this behalf are known.

Provincial Balances shall remain in the custody of the Federal Government for the purposes of the Provincial Government until a Reserve Bank is established.

The revenue of the directly-administered areas shall rest in the Federal Government, and the expenditure of those areas shall be a charge on the Federal revenues.

I would then put down a clause for the expert enquiry in these terms:—

> "As soon as may be after the coming into operation of this constitution, a Commission shall be appointed who shall investigate and report on the following matters to the Federal Government for such action as it may decide to take on the advice of Parliament."

Then we can put down all the matters which we have recommended as being matters for expert enquiry, such, for instance, as Ports, Maritime Customs, Cessions of territory, Army Contributions and various other matters.

If I may say so, the immediate result of our proposals deals mainly with the Provincial position in respect of Income-tax and in respect of Railway revenue, in connection with both of which we have made proposals to equalise burdens and resources amongst the Units without putting the States in any immediate prejudice as to their resources and liabilities. Even with regard to internal Customs, which it is the primary object of all federations to abolish, we have recognised the right of the States levying them to accomplish the desired consummation in due course. There is no new burden imposed on them.

I would therefore strongly appeal to all the members of the Committee, and to the Indian States section in particular, to accept, the wise and sound course suggested to us by Mahatma Gandhi.

Lord Lothian: It is with some hesitation that I intervene in this debate, because my knowledge of Indian finance is very rudimentary; but obviously the matters which have been under discussion to-day and yesterday, and especially the question of the division or financial resources between the Provinces and the States and the Federal Government, raise an issue which goes to the root of the problem of federal government in every country in the world. I do not think there is any doubt that the experience of all the federations of which we have knowledge to-day has led in every single case to the central government either exercising or retaining the right to exercise some powers of "direct" taxation—and notably Income-tax—for their own purposes. I think that is the universal experience of the history of the world.

The proposal which has been put forward in the Report of the sub-Committee is that the Federal Authority—the Federal Parliament—should, as I understand it, both determine the rate and collect the tax, both legislate and collect, and then hand over all the

proceeds to the Provinces. Presumably there would be some statutory or constitutional regulation requiring them to do so, because most governments which have succeeded in collecting money are very reluctant to hand the whole of it to anybody else if they can possibly find any means of keeping it in their own hands. I venture to make this query as to whether that is really a practical proposal, for this reason. I have been impressed, during the discussion in this Committee, with the fact that inevitably the discussion has proceeded on the assumption that the new Government of India is going to function in many ways like the old; that it is a question of substituting what I might call an Indian Raj for a British Raj. I have the feeling, from some experience of government, that what is really happening is that we are creating an entirely different system of government, for this reason. The existing system of government rests on the fact it is wholly centralised, and that the ultimate source of power at the moment is outside India and not inside India, and that every functionary in India, including the Provincial Governments except in the transferred sphere, are really ultimately under the control of the Central Government. But there is really a single policy. Whether you agree with it is neither here nor there; but ultimately there is a single policy which prevails throughout India. It is the policy which is determined by Government, subject to the influence of Indian opinion, but not under the control of Indian opinion. Just as soon, for instance, as you get responsible government in the Provinces, that situation must fundamentally change, quite apart from communal and other considerations, for this reason, that the authority of the Provincial Governments will be derived from the electorate. The first consequence of Provincial autonomy or National autonomy is that power passes from Government to parties; that is to say, those groups who can persuade the majority of the electorates to return a majority of the Members in each Legislature. And every Provincial Government, from that moment onwards, is imprisoned, and absolutely imprisoned, within the limit of what the majority of that Provincial Parliament can agree to. It cannot go outside it. It seems to me quite impracticable (this perhaps is slightly off the present point, but it will come up next week) that any Provincial Government could accept orders from the Centre at all.

Apply it to this situation. The proposal is that the Federal Government should enact and collect the taxation and transfer it to the Provinces. Presumably, if that is so, it will have to do so from the standpoint of what it is necessary for the Provinces to have. The people who will judge that are the Provincial Governments themselves. How are these Provincial Governments going to be brought into touch with the Federal Government? You are going to have very many different parties, and many conflicting interests. In one Province you may have a party which is, on the whole, what you would call agricultural; another industrial; another interested in some communal issue—all with very different

ideas as to what degree of taxation is required. How are you going to get the rate; or are you going to say that the Federal Government itself is going to legislate as to what the Provinces ought to have in their own interests? You have got two difficulties. The first is, if you call the Provinces together and ask them, and they agree upon the rate—say a shilling Income-tax, or half-a-crown, or whatever it is—will you get agreement? And supposing you do not do that, are you going to say that the Federal Government itself is going to determine, wholly in the interests of the Provinces, what the Provinces should have? My own feeling is that, in practice, a system by which the Federal Government, which is no longer unitary and centralised but which has what you might call a horizontal field of government of its own, as opposed to another horizontal field which belongs to the Provinces, will be unable to exercise the powers of determining the Income-tax and hand all the proceeds over to the Provinces. It will neither face the odium involved, having none of the responsibility for spending the money, nor will it be able to secure any reasonable assent from the Provinces. My own view is that Dr. Ambedkar is right in thinking that you will in fact be driven to dividing the Income-tax source between the two Governments, and that, either by the method of the *centimes additionels*, which is a very familiar one, or the other one which he mentioned, you will have to allot to the Provinces certain definite elements in the Income-tax, and leave to the Federal Government the responsibility for adding what it thinks it can afford to add for its own Federal purposes.

Now, there is one other aspect of this question which I should like to mention, and that is this. I think experience shows that what is essential is that, as between the Provinces and the Centre, there should be a definite and immovable statutory line. Nothing is more fatal than that you should have an annual controversy between the Centre and the Provinces over the division of the sources of taxation. It makes anything like co-operation by the Provinces impossible. It makes sound budgeting, either by the Centre or by the Provinces impossible. You have got to say, anyhow for a period of time, to the Provincial Finance Minister and to the Federal Finance Minister, "There are your statutory rights; it is within those limits that you have got to provide for your revenues and expenditure, and you have got to budget for a period of time." If you once begin to do what you do in India to-day, and easily do in India to-day—that is, have negotiation between the Provinces and the Centre, which is easy because the Centre and the Provinces are really one government—if you try to do that when the Provincial Governments are responsible to Legislatures on a party basis and the Centre is responsible to another electorate, you get a hopeless controversy and the breakdown of government itself.

Before the South African Convention met, Sir Henry De Villiars, the very distinguished Chief Justice of South Africa,

went to Canada with a view of studying the working of the Canadian Constitution before presiding over the South African Convention; and as he left Canada, he went to see Sir Wilfrid Laurier, who was one of the oldest and most distinguished politicians in the country, and asked him whether he had any advice to give to the incipient Union of South Africa. Sir Wilfrid Laurier's reply was, " I have only got one piece of advice; avoid the pitfall of concurrent jurisdiction." Any proposal that you should annually discuss the distribution of revenues between an autonomous Province and an autonomous Centre raises, in its most acute form, that problem of concurrent jurisdiction.

The third point I would raise is in regard to paragraph 21, the emergency powers of the Federal Government. Is it really practical politics, under a system of government such as we are now contemplating, in which the Provincial Governments will be responsible to their own electorates and their own Parliaments, and not responsible to or under the control of the Centre at all—is it possible, under such a system, to rely upon the Provinces voluntarily making any contributions, even in emergency, to the Centre? I think experience shows that it breaks down for this reason, that you find the Provinces or the States saying, " Yes, in principle I agree, but I can only do it if we all do it on a uniform basis ." The American Confederation broke down wholly on that point. Bombay will say, " I will give something, but only if Bengal gives the same amount," and you will find that the Legislatures do not agree and the thing breaks down hopelessly. You are driven, I think, in every case to insist that each aspect of the Government, the Provincial on the one side and the Federal on the other, has its own sources of revenue statutorily attached to it, and has to live within the limits of its own powers. That is all I have to say.

Sir Maneckjee Dadabhoy: My Lord, in the course of the last two days, we have heard some very valuable contributions made by some of our colleagues on the question of Federal finance. In the course of their arguments we have discovered, not only conflicting opinions, but in some measure, if I may be pardoned for stating it, inconsistency in argument. On the whole, we are grateful—and I am sure I am expressing the sentiments of the members of the sub-Committee—for the reception given to our Report. Except for what we have heard from our friend. Dr. Ambedkar, who has made a wholesale condemnation of our Report, there seems to be, on major points, a general agreement with and approval of our recommendations. I will ask the members of this Committee to bear in mind the very difficult task that was entrusted to us. It was a task which, I assure this Committee, we approached with a desire and intention to do our very best, and to weigh the various considerations and conflicting interests that were involved in the question of the formation of a Federal financial scheme. We weighed every question from various aspects

and with a desire to bring to fruition the earnest wish of us all, namely, to have a general Federation for India. It was from that point of view, as Dr. Shafa'at Ahmad Khan has pointed out, that we had to go in, to some extent, for a system of compromises. I would also associate myself with the tribute which Dr. Shafa'at Ahmad Khan has paid to our Chairman, Lord Peel, for his tact and for the ability with which he conducted those debates. If it had not been for that, we should not be in a position to present this Report to the Committee.

My Lord, we have in our Report dealt with the question in an adequate manner and, on the materials that were available to us, no other decision was possible. It is very easy to criticise a report and to find a fault here and a fault there; but only those who have had the duty of formulating these proposals can understand the difficulty of putting forward a scheme which would not only be acceptable to British India but which would also be acceptable to the Indian States, whose interests in various other matters are, so far as internal taxation is concerned, not in agreement with any policy of Federal finance. I do not blame the Indian States in the least for the attitude taken up by them. They were perfectly justified. We are now devising a scheme for India which is unparalleled elsewhere in the history of the world. India is not a homogeneous country with singleness of interest and with singleness of purpose. It is a heterogeneous country, or rather continent, in which diverse and conflicting interests are involved; and it is therefore not easy to arrive at a solution which will be wholly acceptable without fault-finding here or there.

Our great aim and object, which we kept in view throughout, was to bring the Indian States in with us. I would remind this Federal Structure Committee of what took place some time ago in the Plenary Session of the Conference. We were distinctly told by Lord Reading on behalf of his party that responsibility would be given at the Centre only on condition that the Indian States came into the Federation. The Conservative group made no secret of their views on the subject, and left their ultimate decision until they could see the picture which would finally be placed before them. In view of the expression of those views, we had of necessity to accommodate ourselves to the position, and, if we wanted federation, it was necessary to carry the Indian Princes with us and have a full measure of their sympathy; for federation was practicable only under those circumstances.

The initial difficulty was in the matter of "direct" taxation. The States are precluded, by reason of their geographical position and other circumstances, from obtaining revenue by means of "indirect" taxation. They have to depend fully on "direct" taxation, and it was natural for them to refuse to enter into the Federation if their available resources—the resources which they could collect for the administration of their territories by means of "direct" taxation—were to be seriously affected. It was natural

for them to say that, if the Federal Government was going in for a scheme of "direct" taxation also, they would be injuriously affected, inasmuch as it would cripple their resources; and therefore it would not be possible for them to come into the Federation. There is much cogency and strength in that part of their argument, and we could not possibly overlook that. We could not honestly and conscientiously ask the States to come in by making huge sacrifices of their revenues. It would have been a preposterous request on our part to have asked the States to do so. There were serious difficulties with which we were faced, and it was in order to arrive at a settlement and to carry the Indian States with us that we found it obligatory on our part to accommodate them to an extent which would enable them to come into the Federation and enable the Federation to be a reality and a success.

I agree in a great measure with the remarks made by the Marquess of Lothian. We felt the propriety of what he has stated, and it lead us to insert the sub-paragraph of our Report under head 15, Taxes on Income. I will read the sub-paragraph:—

> "We are agreed that such taxes should still be collected from the whole of British India by one centralised administrative service. Most of us are also of the opinion that uniformity of rate should be maintained, since variations of rate may lead to unfortunate economic consequences, such as discrimination between industries in different Provinces. Some of us take the opposite view, both because of the constitutional difficulty mentioned below and because of the difficulty of securing uniformity in all Units. The subject is clearly one to which the Expert Committee should devote much attention."

We realised the difficulty; we expressed our views; and we have asked the Expert Committee to revise our decisions if the circumstances necessitate it.

My Lord, there seems to be a considerable amount of conflict of opinion on the question of this Expert Committee. Sir Tej Bahadur Sapru very rightly pointed out, when he opened the debate, that we had not discussed the character and composition of this Committee. My Lord, it would have been a difficult task for us to have actually led either the Federal Government or the Crown as to the choice of its members. We knew that there were conflicting opinions. We knew that one view was to go in immediately for a federation and to give the Federal Government the right to exercise its choice of appointing this Expert Committee and then remoulding the constitution in the light of the recommendations made by that Committee. The other view was that the Crown should nominate an Expert Committee, who would carefully consider the recommendations made in our Report and then subject them to the acid test of verification by examining the statistical position of all the Units as well as of the proposed Federal Gov-

ernment. It was with this object that we stated in our Report that, immediately this Conference has ended, the Government should with the least possible delay, appoint an Expert Committee. That was an explicit and a unanimous recommendation of our sub-Committee.

Now, Sir, there is some difference of opinion as to character of this expert body. My friend, Sir Akbar Hydari, to whom it is always a great pleasure to listen on account of the sanity of the views which he generally propounds, expressed a view with which I feel a little diffident in agreeing. His contention was that the Expert Committee should be a representative one, in which there must be representatives of Indian States' interests present to decide the question. My Lord, I share the view so ably expressed by our Chairman, Lord Peel. Lord Peel made it perfectly clear in his opening speech that we contemplated for this Expert Committee a constitution of an entirely different kind, a constitution not of representatives of British Indian interests and representatives of the Indian States, but we contemplated men of such standing and ability and financial knowledge, so free from local and provincial prejudices, so detached from political views generally, that they would be a body of people who could be trusted and who would be in a position to examine the subject with absolute impartiality and fairness, and whose decision would not be unfair to any constituent Unit in the contemplated Federation. I am still of opinion that, if we want an Expert Committee which will be capable of doing its business properly, effectively and efficiently, it is a Committee of that kind alone which will be able to throw light on the complicated questions involved in the solution of the problems of Federal finance—which alone will be in a position to deal with the subject comprehensively and adequately. My Lord, I may tell my friend, Sir Akbar, that if his own representatives—names of men of ability, I have no doubt, will be submitted—are put on this Committee, or anything like that, I know how these men will be bound by the circumstances of their position. They would be pledged to support the interests which the Indian States put forward, and the position would be a similar one in the case of the British Indian representatives. It is therefore better to consign this task to a Committee which would be absolutely free from all suspicion, and which would receive the confidence of all the different parties.

In the course of our debate, there have been some points raised as regards the stage at which this Expert Committee should come into operation. From the speech of my friend, Sir Tej Bahadur Sapru, I gathered that it was his inention that this Federation should come into existence immediately, and that, after the Federation has come into existence, that Federation should be the body that should appoint this Expert Committee; and from the reasons which I gathered from an examination of the speeches of Sir Akbar Hydari on two occasions—matters which he criticised in the course

of his arguments—it appeared to me that he was not anxious to create this Federation immediately. If a federation can be created by a stroke of the pen—a federation which would be a lasting one —I would subscribe to that immediately; but, with great respect, I have to differ from my friend, Sir Tej Bahadur Sapru, on this occasion. I am inclined to agree with Sir Akbar Hydari, who has put forward the case on behalf of the Indian States, that they should have in their possession the full and complete Report of the expert body before they are in a position to state whether they would join the Federation or not. I must give some measure of credit to Sir Akbar Hydari for the bold front which he has taken in agreeing, on behalf of Hyderabad, and expressing his personal views in favour of coming into the Federation immediately; but he pointed out yesterday that he had to consider the case of a large body of Indian States, and it would be very necessary for them to examine the grounds on which they could come to that conclusion. That case was emphasised and made absolutely clear by His Highness The Maharaja of Bikaner, who pointed out the difficulties of the Indian States. And I must say that if, we examine this question impartially and rationally, I think there is a great deal of reasonableness in the suggestion of the representatives of the Indian States who have placed their position before us.

It has been said that this Expert Committee will take an infinite amount of time, and that the chances of the Federation probably might be impaired. I do not personally think that this Committee will take a very long time; and even assuming—what has been stated in the course of the debate—that it will take six or twelve months, what is a period of twelve months when we are framing a permanent constitution for India? What is a period of twelve months when we realise that a considerable amount of spade-work will have to be done, both in India and in England, before the constitution is brought into operation? We are fully aware that even the Franchise Committee has not started work. In the Simon Report there are recommendations regarding the readjustment of various administrative areas, and that work has not been even started. Until all that work has been completed it will be impossible to start the Provinces with an autonomous form of Government, and still more impossible for the Federation to come into immediate operation.

In the circumstances, I do feel that it would be judicious that the Expert Committee should be appointed, in conformity with the recommendation of our sub-Committee, at an early date, and that, meanwhile, other enquiries should be prosecuted, and a proper and adequate chance be given to the Indian States to consider their position. On the other hand, I feel that, if a hasty step is taken, the result will be that we shall drive away the Indian States from the idea of the Federation. They will say that they will not come into the Federation blindfold and without knowing what they are to accept. I think it would be a perfectly legitimate

position for the States to take up. I therefore trust that better counsels will prevail, and that all my colleagues here will agree that it would be a wise step to allow the Crown to appoint this Expert Committee without the least possible delay, and that other work of a preliminary character, other spade-work, may be proceeded with meanwhile.

Dr. Ambedkar has spoken about the inequality of the burdens which our sub-Committee has recommended. He thinks this is unfair. I am sorry Dr. Ambedkar is not here at the moment. His speech had a great academic value; I cannot for a moment deny it. I heard that speech with the greatest possible interest. Dr. Ambedkar, however, forgot to take practical politics into consideration. How can we assimilate conflicting interests into a harmonious unity and bring about a settlement satisfactory to all parties? That is what we have to consider. He asked " Why are you allowing the Indian States to go scot-free and not pressing them to hypothecate their property in the matter of your loans? " He forgot or did not understand that, if that condition were made, it would immediately drive away the States from the Federation. We had to steer a safe middle course. We roped in the Indian States wherever we could possibly rope them in with safety to their interests and with advantage to the interests of British India. But we had to draw the line somewhere. We cannot ask them to make every possible sacrifice to come into the Federation; it would have been unreasonable to do so. Moreover, India is different from other countries; no precedents regarding what has happened in other countries apply to the case of India, as I have already stated. We have to find a form of administration which will be not only compatible with the financial position of the different Units but also in consonance with the needs and genius of the country itself.

We have therefore to take all these important factors deliberately into consideration before coming to a decision. It is all right from the theoretical point of view—I learnt all about this when I was a boy—to talk about equality of taxation and equality of this and equality of that; but when you come to import such ideas into practical politics there are other considerations which have to be borne in mind, unless you are going to wreck the whole scheme of federation. As Lord Peel pointed out, we have to hold an even balance not only between the Units and the Federation, but between the States and the Units. Lord Peel was perfectly correct in pointing out that there were no champions of federation represented on the sub-Committee, and he very appositely said that few are the champions of unborn children. I entirely share his views. We did all we possibly could to see that the general interests of the Federation were in no way impaired or prejudiced in the decisions and in the final conclusions at which we arrived. We had to nurse, from every point of view, the different conflicting interests.

My friend, Sir Purshotamdas Thakurdas, has made a valuable contribution to the debate, as well as my friend, Mr. Zafrullah Khan; and the suggestions which they have made will receive the attention and consideration of the Expert Committee. One point with regard to Sir Purshotamdas' statement, that the findings of the Sub-Committee should not be allowed, on the question of pre-Federation debt, to prejudice the broader question of an investigation of the liability of India to the whole of the Public Debt of India. My Lord, we were not concerned with this question; it was not within the purview of our reference. We therefore did not consider or allude to it in any way, and we would not be justified in binding this Committee as a whole by any suggestion of ours. That matter will probably come up for discussion at a later stage of our proceedings. At the same time, Sir Purshotamdas will permit me to point out that, under these circumstances, it would be somewhat superfluous to add or insert the words he has suggested. I am afraid it might make the meaning of our text somewhat doubtful if that were done. But I leave that question entirely to Your Lordship's decision.

Then, Dr. Ambedkar and other speakers have said, why have we permitted Transit duties and internal Customs to the Indian States? On the question of Transit duties my friend on the left has fully explained the case, and I do not propose to take up the time of the Committee by repeating his remarks. On the question of internal Customs, it was impossible for us to do otherwise. These Indian States, some of them at least, depend very extensively on these internal Customs, especially a State like Hyderabad. It is their legitimate source of revenue; it is the revenue which they have been deriving for centuries; it is the revenue which enabled them in many ways to meet the exigencies of their public services and their general expenditure. It would be unreasonable, therefore, that, with regard to the internal Customs, we should bring the Indian States within the same category as the Provinces, where we are preventing internal Customs being raised between a Province and a Province.

Now, My Lord, I come to a very, very important question raised by Mahatma Gandhi and supported by my friend, Mr. Rangaswami Iyengar. When one has to differ from a personality like Mahatma Gandhi, one does so with considerable diffidence and hesitation: but the public interest requires and demands that I should express my views freely on the recommendation made by Mahatma Gandhi, and I am perfectly sure that he will be the first man to recognise that the other party should have its full say on the subject. In the course of his arguments concerning our Report, the Mahatma has said that it is a tentative Report, and that for its finality it depends upon these two Expert Committees which have been suggested by the sub-Committee. I beg respectfully to differ from Mahatma Gandhi in that connection. Our Report is in no way a tentative Report. Our Report

is a definite Report, a Report which has been arrived at after a full measure of deliberation; and we have made those suggestions deliberately and with the object of their being put into operation. The mere fact that we have submitted it to a further examination by the two Expert Committees does not make that Report in any way indefinite or tentative. Our real aim, as I understood it then—our real intention in submitting this Report to the Examination of two Expert Committees from two different points of view, as adumbrated in the Report itself—was that an Expert Committee, conversant with the financial management and possessing full and complete financial knowledge of other constitutions, should be in a position to suggest to us any alternative modifications which might appear to be more suitable and more practical and more useful than the suggestions made by us. That is my submission on that point.

The Mahatma has stated that if this Report was referred back to the Finance sub-Committee, it would then come, not within a tentative suggestion but with an agreed suggestion, that so many items of revenue would be Federal. We have clearly classified, to the best of our ability, the Federal items and the Provincial items. We have discerned with due care and attention the matters affecting the Indian States. Our recommendations have been agreed recommendations from every standpoint, and I should be sorry to know that our suggestions were not agreed in the matter of the classification of the different items.

Then the Mahatma stated that we are not clear as to the revenues that would be collected by different Units, and he also said that, if there was an Expert Committee appointed, we should certainly not get absolutely accurate figures. Here, with his usual sincerity, the Mahatma has acknowledged the difficulty of the task. Then he went on to make the very significant remark:—

> "Let there be no leap in the dark; and in order to avoid such a catastrophe, let there be established a humble scheme of patricipation, and let us launch that humble scheme."

It is a poor compliment to our sub-Committee, which spent several days in the consideration of this subject, at great personal sacrifice, that it could even be suggested that we were asking the Conference to take a leap in the dark. We have carefully surveyed every question from all available standpoints. The representatives of the Indian States brought to bear their unique knowledge upon the problems under consideration. We had the assistance of students of history like Dr. Shafa'at Ahmad Khan, of good financiers like Mr. Iyengar, and a financier of exceptional ability in Sir Akbar Hydari; and we made the suggestions contained in our Report after the most mature deliberation.

My Lord, the Mahatma goes further and says that his concrete suggestion is, if it commends itself to the meeting, to refer this Report back to the sub-Committee with thanks, and ask the sub-Committee, with the material at its disposal, to give the Conference a

minimum scheme to which the States agree, and that we should accept that scheme as a scheme to start with, without any encumbrance in the shape of an Expert Committee. The Mahatma, however, did not make clear what he meant by a minimum scheme. I am still at a loss to understand what is meant by a minimum scheme. I have, however, a graver constitutional objection. If you are going to put the Federation into operation, you cannot do it by a patch-work system and you cannot work on a piecemeal basis. If the Federation is to come into operation, it should be a full, complete, all-absorbing Federation, which will leave no room for doubt or difficulty. You cannot make arrangements for a sort of partial Federation. If the Federation is to be brought about, moreover, it must be in conformity with the general principles which underlie all such federations. Moreover, does Mahatma Gandhi feel certain that, even if we have a minimum scheme, the Indian States are going to agree to that?

Mr. Gandhi: That is the crux of my scheme.

Sir Maneckjee Dadabhoy: I should like you to ask them whether they will agree. In paragraph 4 of our Report, we set out some important questions to be decided by an Expert Committee, and we have made it clear that some constitutional questions—namely, those discussed in paragraphs 5 to 17 and 21 to 25 of our Report—should be dealt with in that way. Are the Indian States going to agree to any patch-work scheme which we may design for the moment for getting the Federation quickly into existence? My Lord, if a Federation is formed on such a slender foundation, that Federation will come to grief; and I, as one who is anxious that the Federation should be a success, cannot, with great respect to Mahatma Gandhi, agree to any such suggestion as he puts forward.

There is another point to which I should like to refer in this connection. We have had a large amount of material at the disposal of the sub-Committee, and we have made use of that material. If this matter is again referred to the sub-Committee, is it possible that we should come to any other decision than that already arrived at by us after great reflection and mature consideration? Is it possible that the sub-Committee is likely to alter its findings in important particulars? Is it possible that, unless some new material is brought before it, it will come to decisions other than those at which it has already arrived? If the Report is remitted to the sub-Committee, I, for one, will welcome Mahatma Gandhi to be a member of it. I shall welcome his aid and assistance in the elucidation of these difficult problems. But My Lord, I must point out that it would be a waste of time if this Report were to be sent back to the present sub-Committee for the reconsideration of the subject.

My Lord, I do not know whether I should take Dr. Ambedkar seriously and deal with the various questions which he has placed before us this morning; but I think, in view of the paucity of time and in view of Your Lordship's anxiety that our debate should be closed this afternoon, and in view of the fact that there are other

members who are anxious to speak and who ought to be allowed their opportunity to speak, I will not go into a full examination of Dr. Ambedkar's suggestions. But I must point out one thing (though he corrected his previous statement this morning), namely, that the reference which he made to the Taxation Committee was not correct. I will draw Your Lordship's attention to paragraph 536 and also to paragraph 537 of the Report, in which the Committee has stated something entirely different from what was said by Dr. Ambedkar. I will read the passages:—

> "What they would propose is to give the Provinces the proceeds of a basic rate on personal incomes graduated proportionally to the general rate. For this purpose, the basis of calculation would be the personal returns submitted under section 22 (2) of the Indian Income-tax Act, which provides for a statement of the income derived by the assessee from all sources, including dividends from companies wherever situated.
>
> The whole of the collections on incomes that do not appertain to residents in particular Provinces, such as the tax on undistributed dividends of companies or on incomes of persons resident abroad or residents in places outside the boundaries of the Provinces to which the allotment was made, and the whole of the Super-tax, would go to the Government of India.
>
> In addition to the allotment made on personal incomes, the allocation of which is based entirely on domicile, the Committee would recommend the giving of a partial recognition to the principle of origin by assigning to each Province a small portion of the receipts of the Corporation profits tax."

My Lord, I will conclude now with an appeal. My colleagues want the Federation to be established as quickly as possible. I know that it is the general wish that it should come into operation as early as possible. It is our devout wish and desire that India should be placed as early as possible on the path of progress and that she shall take her rightful place in the comity of nations as early as possible. My Lord, that object will be best achieved by all my colleagues here accepting our Report at this stage, and allowing such improvements to be made in it by the Expert Committee as may be necessary—whose suggestions we shall receive with great respect, sympathy and readiness. I therefore say the practical way for this Committee, as is always the case in general matters, is to accept this Report for whatever it is worth at present, and then, after examination by the Expert Committee, everyone will have the right further to suggest such improvements, modifications and changes as may be necessary. I humbly submit, My Lord, that this is the only wise step which this Committee, if it is anxious to expedite the consummation of the Federation, can adopt.

Sardar Ujjal Singh: With your permission, Lord Chancellor, I wish first of all to congratulate Lord Peel and his sub-Committee on their excellent Report. On the majority of the recommenda-

tions I am in agreement with the Report, and I would like, therefore, to make only a few observations.

I agree with the proposal of setting up an Expert Committee of Enquiry to work out the details of the financial problems. I must say that Sir Tej Bahadur Sapru and Sir Akbar Hydari have, between them, exhausted this subject. I would only say this much, that the Committee should consist of plain experts who must have experience and knowledge of Indian financial problems.

(The Committee adjourned at 1 o'clock and resumed at 2-30 p.m.)

Sardar Ujjal Singh: When we adjourned this morning, I was proceeding to discuss the composition of the Expert Committee which is recommended by the Federal Finance sub-Committee. I said that that Committee ought to consist of plain experts with experience and knowledge of the financial problems of India. But if the object is that the Committee should be composed of experts and should not have a representative character as such, then in my view the object is best served if we have one Committee instead of two. My reason is this, that although the two Committees will be engaged on different tasks, yet, for the purpose of co-ordination and of adjustment it is necessary that both the Committees should understand one another's difficulties. If these two Committees work separately, the danger is that they may become champions of the various fields of enquiry in which they have been engaged. In my view, all the fields should be explored by one Expert Committee. That Committee, I believe, will be able to finish its work within six months. It will certainly work in India and will call for evidence. But an enquiry of this nature should not be different from the enquiry in which the Franchise Committee and other similar Committees will be engaged. The object is to lay down broad principles and then to leave the details to be worked out by such enquiry committees. If the broad principles, as laid down in this Report, are not sufficiently broad, then, as suggested by Mahatma Gandhi, the Report might be referred back to the Finance sub-Committee. But I feel we are all anxious that, on this account alone, the work of the Conference should not be held over. We are all anxious that, when this Conference completes its work, the Federation should be an accomplished fact. For it to remain in suspense, even when this Conference is over, would be, I believe, disastrous to all.

Coming to the Public Debt, I agree with the sub-Committee that " No classification of pre-Federation debt as Federal and ' Central ' for constitutional purposes could be contemplated of such a kind as to affect the position of the lender." The division into Federal and " Central " for accounting purposes could, I believe, be done away with if proper account is taken of all the capitalised value of the profits from Railways and all the Public Works of the present Central Government, which it is contemplated will be handed over to the Federal Government. I do see, however, that there can be no credit balance in favour of the " Central " Government as such,

because, as has been rightly pointed out, some of those Public Works have been financed from resources which are to be Federal and which in the past have been more or less Federal, in the sense that the States have been indirectly contributing.

Coming to paragraphs 8 and 10, on the allocation of resources between the Federal Units and the Federal Government, I agree with the general principle that Federal resources should, as far as possible, be confined to revenues derived alike from the inhabitants of the Provinces and the States. That does not rule out " direct " taxes, but indirect taxes certainly satisfy the test better. If " indirect " sources alone are not found to be sufficient for meeting the Federal expenditure, then I do contemplate that resort will have to be had to some kind of " direct " taxation. I do not know whether the States would be prepared to impose, or to allow the Federal Government to impose, Income-tax on their subjects; but, even if there is objection on the side of the States, there can certainly be no similar objection on the side of the Provinces, and in that case the States should contribute their quota towards the Federal exchequer in the shape of cash contributions.

In normal times, more money is needed in the Provinces than for the Federal Government, whose duties will specifically be for the protection and tranquillity of the country as a whole, while the welfare of the people and development of the " nation-building " departments will be the concern of the Provinces. It is necessary, therefore, that the Provincial resources should be more elastic and should be more adequate than has hitherto been the case. In the Federal sphere, I believe that the real solution will be found to lie, not in giving more classes of taxation to the Federal Government, but in the reduction of expenditure, which is considered to be very heavy at this juncture.

Regarding paragraph 11, which deals with internal Customs tariffs, I do believe that internal Customs are an impediment to the free movement of trade, and so no Province or State—no Unit of the Federation, in fact—should be allowed to levy internal Customs. There is a difficulty, in the existing conditions of India, in that some States do levy internal Customs; but I agree with the recommendations of the Finance sub-Committee that it would not—

> " seem to be, in general, an equitable plan for the Federation to attempt to buy up, so to speak, the existing rights of the States in such a matter. This would simply mean that, in the general interests of economic unity and to facilitate trade, a tax would be imposed on the Federation as a whole in order to relieve the inhabitants of the States."

So that, to give any relief to the inhabitants of the States by the abolition of internal Customs, no equivalent burden ought to be borne by the Federation.

The States should be left to abolish those internal Customs in a reasonable period, and to substitute some other form of taxation; but they should in no case be allowed to raise the Customs duty

from the existing Schedule, and no other State should be allowed to have resort to internal Custom. I would go further and suggest that some time limit ought to be given to those States which levy internal Customs now, so that by that time—say within five years—internal Customs should automatically be replaced by some other form of taxation.

Turning to paragraph 12, with regard to unspecified taxes,—that is, the residuary powers of taxation—I am not quite clear in my mind whether these powers should ultimately reside in the Centre or in the Provinces; but even if these powers are vested in the Provinces, ample provision should be made for the Federal Government to resort to any form of taxation during times of grave emergency such as war or a financial crisis. Unless such powers are given to the Federal Government, it would be disastrous to India as a whole to vest residuary powers in the Provinces.

Chairman: Would you repeat that?

Sardar Ujjal Singh: It would be disastrous to the interests of India as a whole if, without providing ample powers to the Federal Government in cases of emergency, residuary powers were to vest in the Provinces.

Coming to paragraph 15, I agree with the sub-Committee that Income-tax, though mainly utilised for Provincial purposes, should be collected and administered by the Central Authority. It is necessary, in the interests of trade and industry, that the rate of Income-tax should be uniform throughout India. India, of course, is a big country, but it is not like Europe. Our Provinces are not so different from one another as the European countries are. I am quite alive to the argument put forward by Lord Lothian, that Income-tax would not be properly collected by the Central Authority which has no interest in the matter, and distributed to the various Units—the Provinces. But, in spite of all that criticism, at present there appears to be no remedy but to let the Income-tax be collected Centrally and then distributed to the Provinces.

In regard to certain classes of income—for example, agricultural income—I would leave it to the Provinces to levy Income-tax and to collect it, because agricultural income is so closely connected with Land revenue. Of course, for our immediate purposes, agricultural income is not of such great importance, because at present the unparalleled low level of prices has made it impossible for any sort of Income-tax to be levied on agricultural income; and, if such incomes have to be taxed, Provinces with a permanent settlement will be in a better position to do so than those Provinces where the system of Land revenue is revised after a certain period.

There is one other point that I want to mention with regard to paragraph 15, Income-tax. The sub-Committee has suggested that the poorer Provinces should be helped from the Income-tax. I do not agree with the Committee's recommendation on that point. Income-tax is to be collected from various Provinces and ought to be distributed to these Provinces if no portion of such receipts is

to be utilised for Federal purposes; but if any poor Province has got to be helped, it must be helped from the Federal sources, after careful scrutiny by the Federal Government, and not particularly from the receipts of Income-tax.

Coming to paragraph 16, I do not agree with the sub-Committee that the Federal deficit due to Income-tax being allocated to the Provinces should be met by Contributions from the Provinces. If there is any deficit in the Federal Budget, it ought to be met from contributions, or from other sources of taxation, from all Units alike, and not from the Provinces alone; and, in that case, the States as well as the Provinces would be equally contributing to meet that deficit.

With regard to the tributes, I do admit that tributes of a feudal nature cannot exist in a Federation; but the Federal Government might require more money to meet its expenditure, and in that case, if the States are not prepared to allow the Federal Authority to levy Income-tax, then they must be prepared to contribute to the Federal Exchequer on a certain principle to be fixed. In that case, all States alike will be making cash contributions to the Federal Exchequer which will not be in the nature of tributes.

The question of ceded territories, I am afraid, should not be gone into and should not have been raised, because I feel that, if we go into the question of ceded territories or annexed territories or new States created, I do not know where we shall land ourselves.

With regard to the maintenance of State Forces, the forces at present also are maintained at the option of the States, and these forces should not necessarily be maintained in future. No account can therefore be taken of such Forces for purposes of Federal finance. I believe, and I am firmly of the opinion, that the entire Forces and Army in India as a whole should be directly under the Federal Military Authority.

With regard to paragraph 20, Maritime States and Kashmir, I realise that these States have been enjoying certain privileges. For example, the subjects of Maritime States have not been paying any Customs duties, and the same is true of Kashmir. But if any compensation is to be paid to these States for the privileges which they have been enjoying, then some means will have to be found so that they may bear their share of the burdens which every Unit of the Federation must bear for the Federal expenditure.

With regard to emergency powers, I agree with Lord Lothian that contributions from the Provinces will not meet the emergency. In fact, if the contributions have to be exacted by the Federal Authority such contributions may be objected to by some Provinces and Units from various points of view; and, instead of helping the Federal Government in that situation, the crisis will be aggravated. In grave emergencies and financial crises, the Government should have full power, not only in exacting contributions, but in levying any tax, which should be equally levied on States and Provinces.

With regard to borrowing powers, as set out in paragraph 22, I welcome the sub-Committee's suggestion that Provinces should not be allowed to borrow abroad; but certainly there ought to be some freedom for the Provinces to borrow internally in India on the security of their own revenues. But there should be a restricted control by the Federal Government over the time at which Provinces should issue their loans so as to prevent any interference with other issues, Federal or Provincial. A Federal Loans Board should be constituted, and its composition and function should be left to the Expert Committee for determination.

Coming to the last matter, the question of a Statutory Authority for Railways and possibly for Posts and Telegraphs, I do not agree with the recommendations of the sub-Committee. Last time, when we were discussing the draft Report of the Federal Committee, this subject of a Statutory Railway Authority was brought to our notice for the first time. We had no opportunity of fully discussing it. It was pointed out by some of us that it was not advisable to remove the Railways and similar commercial concerns from the purview of the Legislature. But even if it is found necessary that, in the interests of better administration, some sort of Statutory Authority is needed, this should be left entirely to the future Federal Government, and the future Federal Government's hands should not be tied at this moment. That is all I have to say on the subject.

Pandit M. M. Malaviya: Lord Chancellor, At the close of their Hydari, Sir Maneckjee Dadabhoy and Dr. Shafa'at Ahmad Khan appointment of which they recommend, the sub-Committee say, that it will, in their view, have a most important rôle to play, and they anticipate that its work may be so important, and the subjects with which it will have to deal so numerous, that it may be necessary to appoint two Committees, possibly more—the first to deal with a general survey of the problem and an examination of the questions dealt with in paragraphs 5 to 17 and 21 to 25 of the Report, and the second to conduct an enquiry relating mainly to the States, which, they say, might require considerable historical research.

The discussions that have taken place have shown that Sir Akbar Hydari, Sir Maneckjee Dadabhoy and Dr. Shafa'at Ahmad Khan strongly support the recommendation for the appointment of this Expert Committee. It has therefore to be considered whether such an Expert Committee is wanted. On the other side, you have the view presented by Mahatma Gandhi, that the object for which the sub-Committee was appointed was to report upon the general principles upon which the financial resources and obligations of India should be apportioned between the Federation, the British Indian Units jointly and severally, and the States Units. In view of the discussion which was raised, Mahatma Gandhi suggested that the general principles which had been agreed to by the sub-Committee might be accepted, and that whatever more required to be considered immediately might be considered by the sub-Committee, to which the matter might be referred back. The object was that principles, with regard to which there was general agreement, should be

adopted as the basis of the constitution which we are to frame, and that matters of detail should be postponed to a future date. That date, as Mahatma Gandhi pointed out, would be when the new Government of India had been constituted, because matters of detail could best be examined then. The Government would know what further principles required elucidation, what further recommendations were wanted for taxation of new kinds, and so on.

In this conflict of views, I desire to draw the attention of the Committee to the actual recommendations of the sub-Committee, because that, I submit, is the best way of examining whether the recommendation for the appointment of an Expert Committee is one which this Committee should accept.

In paragraph 4, the sub-Committee make the basic recommendation that:

> "Any theoretical scheme for the division of resources and obligations should, before being embodied in the constitution, be put to the test of a careful examination of its probable results by some body which is fully equipped for the task. We accordingly recommend that, with the least possible delay after the conclusion of the present Session of this Conference, an Expert Committee should be constituted for the purpose of working out in detail a financial scheme for the Federation, taking as its starting-point the general proposals contained in our Report."

Now, My Lord, let us take the recommendations under each head. I find, for instance, that they recommend that there should be a considerable degree of elasticity in the financial framework, and that amendments of the constitution, in order to achieve this, should not be so hedged with difficulties as to be almost impracticable. I take it there will be general agreement in this Committee on this principle; I do not think anyone will object to it.

Then the sub-Committee go on to say that—

> "It is undesirable to disturb the existing distribution of resources between the various governments in India, unless . . . . . there are imperative reasons for making a change."

I take it that that also will be agreed to.

The third recommendation is as follows:—

> "that, at all events to begin with, the Federation and its constituent Units are likely to require all their present resources (and, indeed, to need fresh sources of revenue); so that, on the whole, it is improbable that any considerable head of revenue could be surrendered initially by any of the governments without the acquisition of alternative resources."

I do not think there will be any objection to that, either.

Another recommendation says that " Central " subjects should, as far as possible, be eliminated. This is a matter for consideration here. I do not know whether the Expert Committee can pronounce any particular opinion on that subject. Then one of the points proposed to be referred to the Expert Committee is that they should investigate the allocation of " Central " civil pension charges between Federal and " Central ". That certainly does not call for much difference of opinion. That is a matter for the experts which can be taken up later on and settled. It is not a thing which is going to be embodied in the constitution. That is the test which I wish the Committee to apply to the recommendations for the work which is to be entrusted to the Expert Committee.

Another recommendation of the sub-Committee is that if all the obligations of the Federal Government are covered by assets to be transferred to the Federation, the whole of the pre-Federation debt should be taken over by the Federal Government; and the recommendation about the Expert Committee is that the Expert Committee is to investigate whether the obligations are covered by the assests, and, if not, to fix the proportion of the pre-Federation debt to be classed as " Central ". If they are not covered by the assets, that would be a matter for consideration; but the recommendation that—

> " If it were found . . . . . that all the obligations were covered by assets to be transferred to the Federation, the whole of the pre-Federation debt should be taken over by the Federal Government."

is one to which no exception can be taken, and this principle can be adopted now.

I take another recommendation by way of illustration. Central charges, if any, should be—

> " a first charge against the Income-tax collected solely from the British India Provinces, and against any other revenue collected by the Federal Government, but derived solely from British India."

I do not know that the Expert Committee need pronounce any opinion on that matter. This is a matter more for the Government and the States and the Provinces to consider and decide, rather than for an Expert Committee to pronounce an opinion upon.

There is a suggestion, in regard to the matter of the Corporation tax, that the Corporation tax should be classed as Federal; but it is coupled with the very wise clause that, if the States will agree to the principle, the Federal system of taxation should not be dependent entirely upon " indirect taxes ". As it is put in the sub-Committee's Report it is:—

> " As regards the Corporation tax (now called the Super-tax on Companies), however, we suggest that, if the necessity of such a reinforcement of Federal revenues is established, this tax should be included in the list of Federal taxes; and we hope that the States will agree to this principle,"

but it is added:—

> "If federalisation of the Corporation taxe were not accepted by the States, it would continue to be treated as a British India source of revenue."

The recommendation of the sub-Committee is clear. That does not require any exploration by the Expert Committee. It is also suggested that the Expert Committee should determine, with reference to the actual budgetary position, whether any reinforcement of Federal revenues by means of allocation of Corporation tax to the Federal Government is necessary. I am certain that, even if such an investigation were made, its result is not going to be incorporated in the constitution. It is to be made with reference to the actual budgetary position, but of what year? Is it to be the budgetary position of the present year? Will it be the same next year? Is it likely to be the same the third year? The budgetary position changes year by year; and what on earth is to be the recommendation of the Expert Committee which, it is said, should determine, with reference to the actual budgetary position, whether any reinforcement of Federal revenues, by allocation of Corporation tax to the Federal Government, is necessary? I am sure it will be recognised that it would not be fair to impose such a task upon any Expert Committee.

Sir Maneckjee Dadabhoy: It is the average budgetary position. I quite agree with you that the Budget would differ every year, and that one year's figures would not tally with another year's figures.

Pandit M. M. Malaviya: The average of what years, Sir Maneckjee?

Sir Maneckjee Dadabhoy: The average of a few years.

Pandit M. M. Malaviya: What particular period would you take?

Sir Maneckjee Dadabhoy: Take the last three years.

Pandit M. M. Malaviya: And under the new system or under the existing system?

Sir Maneckjee Dadabhoy: Well, of course, the new system is not in operation yet.

Pandit M. M. Malaviya: Well, who will venture to look into the future and prophesy what the budgetary arrangements two or three years hence will be in the Government of India; what reductions of expenditure it will bring about; what sources of revenue it will abandon; what new sources of revenue it will adopt? I am sure that no man with any practical knowledge of finance would seriously put forward the suggestion that the average Budget of any particular period of years should be adopted as the basis of such an enquiry, especially nowadays. We do not know where the budgetary position will stand next year and the year afterwards, and so on. I submit, therefore, that this recommendation, that the Expert Committee should determine, with reference to the

actual budgetary position, whether any reinforcement of Federal revenue by means of allocation of Corporation tax to the Federal Government is necessary, is an impossible proposition.

With regard to the list of the classification of revenues as Federal and Provincial, it is suggested that—

> " these lists should be examined by the Expert Committee, not only in order to review them generally, but also to expand and particularise them, and to include in them all sources of taxation at present used in British India or under contemplation."

My Lord, I do not think that a proposition like this can be seriously considered. The classification of the list, so far as it has been made now, is clear. We might suggest some additions. We might suggest some alterations. But where is the need for an Expert Committee to revise these lists, to review them generally, to expand and particularise them, and to include in them all sources of taxation at present used in British India or under contemplation? The Government of India appointed a Taxation Enquiry Committee some years ago. That Committee has made recommendations as to possible sources of taxation. When the new Government of India is constituted it will be its privilege, as its duty, to consider what sources of taxation might be adopted, and which might be dropped. I do not think that any Expert Committee can, at present, usefully pronounce an opinion on this matter. Most certainly I venture to say that Parliament would not think of embodying a recommendation like that, if ever made, into the constitution.

Then, My Lord, Contributions from Provinces, if there should be a substantial Federal deficit, have been recommended; but it is added that the Expert Committee should determine the most appropriate basis on which such contributions are to be made. At what period will the Expert Committee sit and work, and upon what state of affairs will it base its judgment. Are we to assume that a substantial Federal deficit has occurred, and is the Expert Committee to proceed on that basis without being able to determine the measure of that Federal deficit? Will the Committee require to know the financial positions of the Provinces, and in what straits they may be at the moment? The word used in more than one place is " determine ". The Expert Committee, therefore, is vested with greater power than Expert Committees are usually given. One would think that the Federal Government and the Provincial Governments would have their representatives meet together to weigh the entire situation, and, in view of the situation existing at the time at which a contribution might be required, would decide what contributions, if any, should be made.

As regards contributions from the States, it is said that the Expert Committee is to examine the whole question of cash contributions from States and ceded territories and pronounce an opinion as to the equities in each individual case. The recommendation of

the sub-Committee is clear. They have recommended, as regards cash contributions, that there is—

> "generally speaking, no place for contributions of a feudal nature under the new Federal Constitution; and only the probability of a lack of Federal resources at the outset prevents our recommending their immediate abolition."

I submit that we should accept the recommendation and decide that they should be abolished forthwith. These contributions have been described as tributes. Tributes cannot exist in a free India, in which the relations of the States and the Federal Government will be determined, not under circumstances similar to those which existed when Treaties were entered into between the States and the East India Company, but under happier conditions, when the States will be actual participators in the Government of India as a whole. There can be no question under the new system of any cash contribution made by any State, howsoever humble it may be; and no Expert Committee is needed to determine the question of cash contributions from States.

The sub-Committee also states that it has been unable to investigate in detail the claim of the States that, through having ceded territory, some of them will be liquidating a liability in respect of Federal burdens; and it proposes that the Expert Committee should examine the whole question and pronounce an opinion as to the equities in each individual case. I know that discussions relating to contributions and ceded territories have been going on for some time past between the Government and some of the States. They have not been easy of solution. Is this Expert Committee to give us a solution of each individual case and, if so, within what period? Hitherto the Government of India have appointed representatives, and the States have appointed their representatives, and many such questions have been solved by discussions between them. How is this Expert Committee to pronounce an opinion within a few months on the equities of each individual case; and is that to be embodied in the constitution?

Then I find that the question whether "Narcotics" should, for the purposes of taxation, include Tobacco, has been left open. Do we require it to be examined by an Expert Committee? What expert knowledge is required to examine whether Commercial Stamps should be federalised or not? A commercial opinion may be expressed, but I do not see that you want to set up an Expert Committee to examine the question. Further, My Lord, there is a proposal regarding Terminal taxes, as to whether there should be any; and it is recommended that the Expert Committee should examine the possible objections raised to these taxes and suggested conditions subject to which the imposition of these taxes might be permitted. Is this Expert Committee to take over the function of the future Government of India and the future Legislature of the country on such questions? Whether these taxes should be permitted or not is a matter which has to be decided by the representatives of the people, who will be assembled in the Legislature.

Why should such an Expert Committee be troubled with such a matter?

Another of the recommendations says that no form of taxation should be levied by any Unit of the Federation on the property of the Federal Government; and then the sub-Committee go on to say:—

> "The precise form in which this principle should be expressed should be examined by the Expert Committee."

The principle is that no form of taxation should be levied by any Unit of the Federation on the property of the Federal Government. I should think that is clear enough. I do not see why the possible precise form in which this principle should be expressed requires to be examined by an Expert Committee.

Another recommendation which the sub-Committee have made is this. They say:—

> "It should, we think, be open to the Federal Government, with the assent of the Federal Legislature, not only to make grants to Provinces and States for specified purposes, but also, in the event of its ultimately finding that Federal revenues yield an apparently permanent surplus, to be free, as a possible alternative to reduction of taxation, to allocate the surplus proceeds to the constituent Units of the Federation, both States and British Indian Provinces."

That is the general recommendation. The special recommendation is that the proportions in which the funds which may be available should be divided among the Units—whether according to their respective revenues, or to population, or to some other criterion—should be determined by the Expert Committee. Now, My Lord, we do not know when such a situation will arise when there will be funds available for distribution; but when such funds are available for distribution, will not the Federal Government be able to settle the matter itself after correspondence with the Provincial Governments and the States? I do not see how any experts will be able to picture to themselves the conditions which may be present at any particular period of time—the respective financial positions of the various Provincial Units and States which may be concerned in the matter—so as to be able to suggest according to what rule—"whether according to their respective revenues, or to population, or to some other criterion"—the division of the funds should take place.

Another recommendation is that the proceeds of taxes on Income, after the deduction of "Central" charges, if any, should be redistributed to the Provinces, but that such taxes should still be collected from the whole of British India by one centralised administrative service. The recommendation with regard to the Expert Committee is that the principles on which the proceeds of the Income-tax should be so distributed should be considered by the Expert Committee. What is the future Government of India to do? All these functions might very well be left to the Govern-

ment of India—the Federal Government, that is—to settle. The principles on which the proceeds of the Income-tax should be re-distributed, it is said, should be considered by the Expert Committee, which, it is recommended, should also consider the question of uniformity of rate. A great deal of knowledge will be required of the Provinces and of the States of India generally, of the conditions of the people in different parts of the country and of the average income of the people, before any such question could be fairly decided. I submit that no Expert Committee is needed to deal with this question beforehand.

Another recommendation is, however, that the proposed Expert Committee should include in its enquiry the question of the possibility of empowering the Provinces to raise a tax on agricultural incomes. My Lord, the possibility of raising a tax on agricultural incomes has been much discussed in the past. I do not think that any Expert Committee which may be appointed will be able to add very much to the general knowledge on the subject. Is it meant that it should go beyond that, and that its recommendations should be accepted, supposing it to recommend that a tax should be raised on agricultural incomes? If that is so, it will be trespassing on the functions of the Government of the country.

Then there is a recommendation that Provincial borrowings and Federal borrowings should be co-ordinated as far as possible, and it is recommended that the Expert Committee should consider whether this should be done by the constitution of a Federal Loans Board or Council, " consisting of representatives of the Federal Government and of the constituent Units." I do not know that that will be required to be incorporated in the constitution.

I think I have drawn attention sufficiently—

Chairman: to a number of points for which you say you really do not want an Expert Committee.

Pandit M. M. Malaviya: Yes. In view of these, I do not think there is any work needed to be done by an Expert Committee. These are matters mostly to be settled by the representatives of the Government and of the Provinces, or they are matters which will be settled by experts whom the Government of the future may appoint on certain questions. These are certainly not matters for which an Expert Committee should be appointed at this stage, and which would require six months time in which to do its work.

With regard to the question of the two parts of the enquiry, the first is to be a general survey of the problem. I submit that the sub-Committee's Report has made a general survey of the problem, and has made its recommendations on that survey; but it is recommended that—

> " the principal object of the first enquiry would be a general survey of the problem and an examination of the questions dealt with in paragraphs 5 to 17 and 21 to 25 of our Report."

I fail to see, My Lord, where is the need for an Expert Committee to deal with the problems which have been considered and reported

upon by the sub-Committee which was presided over by so experienced a Parliamentarian as Lord Peel, and which had on it such representatives of Indian States as Sir Akbar Hydari, Sir Mirza Ismail, Colonel Haksar, and other gentlemen who are familiar with the questions of the finances of the different States and of the financial relations of the Government of India with the States. I submit, therefore, that there is no occasion to appoint such a Committee for what has been described as the first enquiry.

As regards the second enquiry, which is to relate mainly to the States, it is said that it would require considerable historical research. My Lord, if it will require considerable historical research, I fail to see what result it will produce which will require to be embodied in the constitution. It may require considerable historical research, although I do not know. The Butler Committee went into the question of the States and their relations with the Government of India. The representatives of the States have been busy with this question for a long time, and I believe that in the Secretariat of the Chamber of Princes they have got very valuable information on these questions which perhaps it would be difficult for any Expert Committee to collect without their help.

It seems to me, therefore, that the general recommendations of this sub-Committee should be accepted. This is what Mahatma Gandhi suggested yesterday. The object of his suggestion was that, if it was felt that there was any difficulty in adopting the general principles, then the matter might be referred to the sub-Committee for a further Report; but only if no such difficulty is felt—and I think none should be felt, in view of the recommendations which have been made. I have not heard any objection taken to any particular recommendation, or any strong objection raised; and if there is such an objection, it can be disposed of here. But most certainly I fail to see any reason why we should be hampered by any proposal for the appointment of such a Committee. I therefore recommend that the general principles recommended by the sub-Committee should be adopted. I also recommend that the clause in the fourth paragraph of the Report, that—

> "Any theoretical scheme for the division of resources and obligations should, before being embodied in the constitution, be put to the test of a careful examination of its probable results by somebody which is fully equipped for the task,"

and the recommendation for the appointment of the Expert Committee, should not be accepted. If we are agreed on these two points, the work of this Committee can go forward.

My Lord, I cannot contemplate with equanimity a long postponement of the question of the framing of the constitution for the future Government of India. Unless there is a reason to the contrary which will commend itself to the members of the Conference generally, the sooner we come to a decision as to what the constitution is to be the better will it be for all interests concerned. I therefore request the Committee to examine this proposal closely.

If, as I have submitted, the Committee are satisfied that, speaking generally, none of the matters recommended to be entrusted to the enquiry by an Expert Committee is such as should stand in the way of proceeding with the work of the constitution, we should come to a unanimous conclusion on that point. I am sure, from what Their Highnesses The Maharaja of Bikaner and the Nawab Sahib of Bhopal have said, and from what Sir Akbar Hydari has said, and from what other representatives have said, that it is clear that the States do not want that there should be any delay in framing the constitution of the future Government of India; and if the States are agreed that these principles are generally acceptable to them, then I submit that we should decide to adopt them, and to proceed with the work of framing the constitution.

Lord Peel: Lord Chancellor, I do not wish at this stage to reply generally to all the criticisms that have been made by different members of the Committee. I merely want to make one suggestion about an alteration in the draft of the Report. I have not had the opportunity of submitting it to the sub-Committee, but I should like to mention it at this stage only as a suggestion, as a mere suggestion, in order possibly to remove some misconception that has arisen as to the scope of the Expert Committee. I should like to do it at this stage because members who speak subsequently might perhaps have an opportunity of expressing their opinion upon it. I think there has been, in the minds of some speakers listening to the debate, some slight misunderstanding as to the actual intention of the sub-Committee in the proposal, or in the scope of the proposal, which they have put forward as to the Expert Committee. I should like to call their attention, if I may, to certain words in paragraph 4, at the end of the first paragraph. It reads thus:—

> "The Expert Committee must have for its guidance some general principles of the kind set out below; but it should be free to make alternative suggestions if, on closer examination of the facts, a probability is disclosed that any general principle laid down by us would, in practice, prove unworkable."

I think that has been to some extent interpreted by some of the speakers as—I will not say, a general invitation, but—a sort of permission to this Committee really to examine all these general principles and possibly substitute fresh ones, and in fact throw into the melting pot the whole scheme, or nearly the whole of it, proposed by the Finance sub-Committee. Of course it was not intended to do that. We only wanted a certain liberty to the Expert Committee to make alternative suggestions in certain cases if they found that, in practice, examining carefully the application of a particular principle, the application of that principle might prove to be unworkable. It is possible that the Report in that respect was framed in rather too general a language, and I was going to make the following suggestion. After the words "the Expert Committee must have for its guidance some general prin-

ciples of the kind set out below," I propose to substitute the following in place of the next three lines in the Report:—

> "If the Expert Committee finds, on closer examination of the facts, that any general principle laid down in our Report would, in practice, prove unworkable, it will of course, be open to it to indicate by what means, in its opinion, the difficulty may be overcome."

That, I think, would have a limiting effect upon the operations of the Committee; and I think it would make clearer, if not quite clear, what was the intention of the sub-Committee, that this departure from the general principles laid down for the guidance of the Expert Committee should only be made in certain specific cases. I throw out the words I have just read for the consideration of the Committee.

Sir Maneckjee Dadabhoy: We are prepared to accept that on this side.

Sir Akbar Hydari: It was represented that perhaps there might be some difficulty in that respect.

Pandit M. M. Malaviya: I am opposed to the recommendation for the appointment of the Expert Committee now. I think it should be left to be appointed by the future Government of India.

Lord Peel: I may perhaps deal with that later. At this stage I only wanted to put forward those words.

Diwan Bahadur Mudaliyar: As I have listened to the debate during the last three days, I think it is perfectly clear that, on the general principles laid down by the sub-Committee, there has been a very fair agreement on all sides of the Committee. One question which loomed large during the last few days is that of the composition, the appointment and the functions of the Expert Committee. I think the intervention of Lord Peel a few minutes ago has considerably eased the position with reference to the Expert Committee as far as I am concerned.

I should like first to deal with the suggestion for the appointment of an Expert Committee and try to point out what exactly is the difficulty that some of us feel in accepting that recommendation in the form in which it was first presented in the Report of the sub-Committee. Two Committees are in fact contemplated by that Report. There is an Expert Committee which would deal with the general principles which have been laid down by the Federal Finance sub-Committee, and there is a second Expert Committee which would deal with questions relating to individual States and adjustments with individual States.

Let me take, first of all, the first—and, if I may say so, the more important—Expert Committee, and try to analyse what are the difficulties some of us feel in the way of the appointment of an Expert Committee and in the way of the acceptance of its recommendations. The reason why that Expert Committee and the need for its appointment have been canvassed so largely is merely

this. At what stage are the conclusions of that Expert Committee to be implemented? Are they to be implemented in the constitution we are going to draft? Is the draft Bill, which we all hope will emerge as a result of the discussions at this Round Table Conference, going to be held up and the Parliamentary procedure thereon going to be delayed until the Expert Committee has reported? What would be the implications of that suggestion? After the Expert Committee has reported, a third Round Table Conference would be inevitable. The general principles would still have to be agreed upon by the States *en masse*, if I may say so, and by the British Indian Provinces *en masse*. It is not a question of adjustment with any single State, but the position of the entire body of States depends upon the result of that expert investigation. If that is the position then it is obvious that there cannot emerge a draft Bill at the conclusion of the sittings of this present Session of the Round Table Conference. Whether the next Session is held in England or India is another matter; but it is quite clear that the draft Bill which we hoped would emerge out of the deliberations of this Conference, and the legislation which will pass through Parliament as a result of it, would be held up.

There has been a great deal of talk about the completed picture. Sir Samuel Hoare used the phrase on the last occasion, and many of us gave our assent to the idea that a complete picture should be seen before we were committed to the proposal of a Federation. It seems to me, however, that the complete picture should be regarded as the picture from the point of view of the British Indian Provinces and the Indian States as a whole, and not from the point of view of every single individual State. We would like to have the agreement of the States *en masse* as regards any principles of taxation and any allocation of sources of revenue to the Federal Government and the Units. That is why we suggest that the appointment of a Committee to consider the allocation of these sources of revenue and to frame proposals with reference to them would delay the draft Bill, would delay the constitution, and would therefore endanger the Federation. It is not possible to think of the consequences of further delay before we are committed to the draft Bill embodying the Federation. The draft Bill will be the completed picture, in my opinion, to which the States *en masse* will agree and to which the British Indian Provinces *en masse* will agree.

Chairman: Would you mind telling me just what you envisage when you speak of the draft Bill?

Diwan Bahadur Mudaliyar: On this particular question, I should like to confine myself at the present moment to finance, because we are dealing with finance. In the draft Bill there will be provision for sources of revenue for the Federal Government and for sources of revenue for the Provincial Governments.

Chairman: To what Bill are you referring?

Diwan Bahadur Mudaliyar: To the draft Bill which will pass through your Houses of Parliament. We have taken it for granted

that, at the conclusion of our deliberations, draughtsmen will draft a Bill to pass through your two Houses of Parliament. That draft Bill, in my opinion, should represent the completed picture to which the States, generally speaking, have given their adherence, and British India, generally speaking, has given its adherence.

Chairman: You speak of the decisions of this Committee, and I should like to know when they are coming!

Diwan Bahadur Mudaliyar: Taking the question of finance, My Lord, the Federal Finance sub-Committee has submitted a unanimous Report, in which certain principles have been laid down. It may be that, on further consideration, some of these principles may have to be modified. All that I would suggest is that these principles, if acceptable to the whole Committee, will become the decisions of this Conference and will be embodied in the draft Bill.

Chairman: Are we to have a Bill by piece-meal, or only a Bill for this particular thing?

Diwan Bahadur Mudaliyar: This will be one of the clauses in the new constitution. If we can complete each chapter as we proceed, ultimately the draft Bill will complete itself.

Chairman: Have you envisaged the number of chapters?

Diwan Bahadur Mudaliyar: I cannot immediately say what the number of chapters will be, but I can certainly give some of the details of the various chapters.

Chairman: I should be most grateful if you would, for example, tell us the first chapter. What, in your opinion, would be the first chapter?

Diwan Bahadur Mudaliyar: The first chapter would be the composition of the Federation. The Federation will consist of the Indian States and British Indian Provinces—such Indian States as will enter the Federation, and all British Indian Provinces without exception.

Chairman: The first part would be a chapter dealing with the Indian Federation?

Diwan Bahadur Mudaliyar: Yes.

Chairman: What is the second chapter?

Diwan Bahadur Mudaliyar: The second chapter will deal with the composition of the Federal Parliament.

Chairman: I have that down as the third chapter. The first chapter is "Indian Federation." Let us say the second chapter is "The Federal Legislature." What is the third chapter?

Diwan Bahadur Mudaliyar: The third chapter will relate to the Federal Government.

Chairman: I have got it "Federal Executive." Is that right?

Diwan Bahadur Mudaliyar: Yes.

Chairman: Shall we put it in this way: Chapter I, the Indian Federation; Chapter II, the Federal Executive; Chapter III, the Federal Legislature?

Diwan Bahadur Mudaliyar: Yes.

Sir Muhammad Shafi: Before Chapter I, the Indian Federation, there ought to be some definitions. Where will these come?

Chairman: I have thought of that. I do not say I have tossed up for it; but in some Acts they come at the beginning and in other Acts they come at the end. I have got mine at the end. What do you think the next chapter should be, Mr. Mudaliyar?

Diwan Bahadur Mudaliyar: The powers of the Federal Legislature.

Chairman: I have got it "Provincial Executive. Provincial Legislature."

Diwan Bahadur Mudaliyar: I thought we would come to Provincial after we had finished with the Central.

Chairman: What do you say the next one is?

Diwan Bahadur Mudaliyar: The powers of the Federal Government—the Federal Executive.

Chairman: I have got that. Would you accept "Relations between the Federal Government and the Federal Units?"

Diwan Bahadur Mudaliyar: Yes.

Chairman: I have got that down as V. What about the next one? I have got "Financial Provisions" down. Is that right?

Diwan Bahadur Mudaliyar: Yes, a chapter on Taxation and Finance.

Chairman: I do not want to go very much further. I have got No. VII down as "Judicature." Will that meet with your approval?

Diwan Bahadur Mudaliyar: Yes.

Chairman: That is the Federal Court which we are going to discuss to-morrow. Could you kindly tell me this. We have nearly settled these financial provisions, and I shall not have any difficulty there; but what about the Federal Executive?

Diwan Bahadur Mudaliyar: I do not understand Your Lordship.

Chairman: When we have got agreement on all those, we shall be prepared to draft the Bill?

Diwan Bahadur Mudaliyar: Yes.

Chairman: I am sorry to interrupt you, but you were just touching on the very vital point of the question, because we are really now getting to something being done, and I hope to finish these financial provisions, and I hope to finish the judicature very soon. I have got one or two other things down—Public Services, the Secretary of State, Machinery for Constitutional Amendments, and so on, but I will not trouble you with those now. I am so sorry to interrupt you, but when you said this I was only thinking whether you wanted to have seven or eight Acts of Parliament, one dealing with Finance only; but we must get them all, must we not?

Diwan Bahadur Mudaliyar: We must, My Lord. My difficulty in accepting this is that it would involve seven or eight Acts of Parliament; but I want it all in one Act of Parliament, and that as soon as possible. The difficulties will have to be faced later. For instance, if we accept the general principles as laid down by the sub-Committee—and I am perfectly prepared to accept them all—and supposing an Expert Committee were to find out that some principle was to come later, that could be treated later as a Constitutional Amendment in a new Act. I am only throwing out the bare suggestion. The point is this, that an Act is a place where provisions can be embodied so that no State or Province need be under any apprehension or any fear that some other system of finance than that to which they were consenting parties will be imposed on them after they have come into the Federation.

Chairman: Who is to decide upon Constitutional Amendments—the new Federal Government or the British Parliament?

Diwan Bahadur Mudaliyar: The actual passage of the Constitutional Amendment will be part of the powers of the Federal Legislature. It may be hemmed in by conditions, no doubt.

Chairman: What sort of conditions? Have you thought about that? I have a list of the conditions. I was only wondering if yours were the same as mine. What sort of thing, for example, would you put it out of the power of the Federal Government to amend its constitution upon? Do not let me embarrass you now, because it is very important that we should not make suggestions, so to speak, in a hurry, which afterwards we might perhaps want to vary a little; but you will think, will you not, as to what powers should be given to the Indian Legislature to amend its own constitution? You would not have any power to amend anything in the constitution which went to the protection of minorities, for instance?

Diwan Bahadur Mudaliyar: I believe on the last occasion also we dealt, though I think very lightly, with the question of Safeguards; and questions relating to minorities would not be within the purview of the Federal Legislature to amend in the constitution. The particular matter which I was thinking of was this. An Expert Committee might find later, after investigation, that we had made some fundamental mistake in the principles which we have embodied in the constitution. That might be rectified by Constitutional Amendment. I am only putting it forward as an extreme position.

Sir Maneckjee Dadabhoy: We shall have to consider this at a later stage. It is a very important matter, it is a very significant matter, and I at least am not prepared to agree to the suggestion to take away the power of the Crown in this matter. The minorities will certainly not agree to any suggestion.

Sir Muhammad Shafi: I do not think we need express any opinion at this stage. When we have the matter before us, we shall then be able to consider it and deal with it.

Diwan Bahadur Mudaliyar: I was only on this particular question of finance, and as a matter of fact the sub-Committee have gone a little further than I am prepared to do when they say, at the end of page 3 and the beginning of page 4—

> "Whatever success in attaining this object can be achieved, we still consider it important that the Conference, when considering the question of constituent powers, should be specially careful to ensure that amendment of the constitution in this respect is not so hedged with difficulties as to be almost impracticable."

Sir Maneckjee Dadabhoy: That is only the financial part.

Diwan Bahadur Mudaliyar: I was dealing only with the financial part.

Sir Maneckjee Dadabhoy: But we were drifting into the other bigger question.

Diwan Bahadur Mudaliyar: I was careful to say that the question of minorities should be outside the province of Constitutional Amendments.

Now, My Lord, this Expert Committee cannot hold up the passage of the Bill in Parliament. That is my whole point. We have come to some conclusions here and now on general principles. In this regard I accept what Mahatma Gandhi has said, and that is how I interpret the intentions behind that suggestion. If we accept the view that the sub-Committee has laid down sufficient principles to be embodied in the constitution, no reference back to the sub-Committee is necessary; but if there is a feeling that things might be thrashed out further, let us go back to the sub-Committee, and obtain another unanimous Report, as I am certain we should have, considering the experience and ability of many of the members of that sub-Committee. Then we will accept that as the basis of the draft Bill.

Chairman: You mean, as the basis of that part of the draft Bill?

Diwan Bahadur Mudaliyar: As a part of the draft Bill. With reference to the second Committee, the position is entirely different. That Committee will deal with the relations of individual States and their adjustments. I envisage two possibilities with reference to that. This sub-Committee's Report has laid down that the present position must be maintained until, by agreement, it can be changed. Every individual State knows its present position, whether a Maritime State, or the State of Kashmir, or any other. The *status quo* will be maintained unless and until, by agreement between the Federal Government on the one hand and individual States on the other, it can be altered. There can, therefore, be no difficulty on the basis of the present status of individual States, whatever their problems may be, in taking the picture of the final Act of Parliament as a complete picture and coming in. The expert investigation by the second Committee will go on, and in case any individual State wants to reopen the question of its status after the Report is

published, the Federal Government and the individual State will come to an agreement on that and will alter the status to the satisfaction of both parties. That is the first position that I would take up.

Sir Maneckjee Dadabhoy: I should like to ask one question. The speaker has just said that this draft Bill will be a picture for all of us to consider. I want to know, once the Bill is placed before Parliament, what jurisdiction we Indians will have over this Bill. What power shall we have over that Bill to suggest any alteration or modification of its provisions?

Chairman: What jurisdiction do you suggest that you should have?

Sir Maneckjee Dadabhoy: Not jurisdiction, control.

Chairman: Well, what control do you suggest? I simply want to know as a member of the Government responsible.

Sir Maneckjee Dadabhoy: Suppose that some section or minority says, " We do not agree with some part of that picture," once you introduce that draft Bill, how can we help ourselves?

Chairman: What do you expect us to do then?

Sir Maneckjee Dadabhoy: We must know the picture before it goes to the House of Commons.

Sir Tej Bahadur Sapru: Suppose the House of Commons, during the passage of the Bill, wants to alter or modify it?

Sir Maneckjee Dadabhoy: That does not affect us.

Sir Tej Bahadur Sapru: The Houses of Parliament can alter the Bill as it has been agreed, and surely that affects India?

Sir Maneckjee Dadabhoy: That is why I want it to be carefully considered by each Unit before it goes to Parliament.

Chairman: You mean to say that we are to circulate the Bill to each Unit?

Sir Maneckjee Dadabhoy: We need not circulate it, but the Conference will know at least what the Bill is.

Sir Tej Bahadur Sapru: Which Conference?

Sir Maneckjee Dadabhoy: I mean, when the Bill is drafted we may be in existence; we may be in session. We must have at least the picture before us.

Diwan Bahadur Mudaliyar: My Lord, every member of the Conference knows that there is a distinction between the British Indian Provinces and the Indian States. For one thing, the British Indian Provinces are all represented; for another, what the British Indian Delegates on this side all agree to will be binding so far as all the British Provinces are concerned without exception. So far as the Federation is concerned, States may come in or keep out, but the British Indian Provinces all come in without exception. If my friend realises this vital distinction, and that no individual Ruler and no Delegate on the States side can bind any individual

State, but can only give us the opinion of the States *en masse*, then the position is quite clear. Individual States will have liberty to come into the Federation even after the Act is passed, but the British Indian Provinces will come in immediately the Act is passed, subject to the reservations which are made in the Act as to when Federation should start to work.

I was suggesting we should take the position of the individual States with reference to their difficulties, with reference to those things which need adjustment and those things which the Federal Government will have to yield before they come in. As I said, if the *status quo* is maintained and the constitution emerges out of Parliament, there will be sufficient picture for them to come in immediately. The alteration of the *status quo* will be a matter of negotiation after the results of an expert investigation, if you will, between the Federal Government on the one hand and the individual State on the other. To that extent I agree with what our distinguished colleague, Sir Tej Bahadur Sapru, said yesterday, that in these matters of the alteration of the status of individual States, the procedure must be by negotiation with the Federal Government, which must bear the brunt of the alteration of status.

The second basis is a more extreme one. I am prepared as a last resort to concede that individual States will hold out from the Federation and not come in even on the basis of the present status until their individual claims are satisfactorily settled. I am even prepared to go so far as that; but I say that the picture, so far as the States *en masse* are concerned, must be completed as soon as this Round Table Conference can finish its work and when the Bill is to be presented to the House of Commons. An expert investigation which delayed matters and necessitated a further Round Table Conference would certainly be out of the question, I submit, and is not envisaged, I venture to suggest, by any member of the Federal Finance sub-Committee or by any representative of the Indian States.

Chairman: Are you in effect, then, saying that decisions by this Committee, or by the Round Table Conference, are a condition precedent to a Bill?

Diwan Bahadur Mudaliyar: I always understood that that was the case. The maximum amount of agreement at which this Conference arrives on various questions will be, as I understand the position, the basis of the Bill and will in fact form part of the draft Bill; and that is the completed picture—since there has been so much talk about it—that I envisage before the Federation can be said to have started.

And now, My Lord, I do not think I need say anything on the merits of the Report of the sub-Committee. As I have said, the general principles have all been accepted; and I do not see any difficulty at all in having unanimity on those general principles —such unanimity and such general principles as will enable the draughtsmen to embody them in the constitution.

There are only two minor points to which I now wish to refer very briefly. They concern paragraphs 24 and 25 of the Report. Now, there are many parts of the country which are directly administered by the Central Government at the present time—Ajmer-Merwara, Coorg, Baluchistan, the North-West Frontier Province and even Delhi itself. With reference to the North-West Frontier Province, another sub-Committee of this Conference has reported on the constitution which that Province should have; and, if those recommendations are adopted, it is no longer going to be directly administered by the Central Government or by the Federal Government. Now, My Lord, the Finance sub-Committee suggests that the Federal Government will be in charge of these areas. I do not want to raise this question as a matter of finance, but I should have thought that, normally speaking, the Federal Government ought not to be in direct charge of any particular area. It is possible there may be difficulty with reference to one or two areas like Baluchistan; but I envisage the future to be one where the Federal Government has no direct charge of any of these areas. In the result, those areas will be absorbed in some Province or other. Baluchistan will be one of those areas which cannot be absorbed, and therefore is an exceptional case which may be treated as a Province directly administered by the Federal Government.

Chairman: Would you mind not going quite so fast. What were you saying about Baluchistan?

Diwan Bahadur Mudaliyar: There are two Provinces which, by their position, are of fundamental importance to the Federal Government. They are the North-West Frontier Province and Baluchistan. So far as the North-West Frontier Province is concerned, if the recommendations of the North-West Frontier Province sub-Committee are accepted, it may not be any longer centrally administered; it will be a Federal Unit. So far as Baluchistan is concerned, it is recognised that it cannot form a Federal Unit at the present stage; nor do I recommend its absorption into any other Province. Its position in contiguity with Foreign States makes it essential that the Federal Government should have some amount of control and direct charge of this particular Province. But, barring Baluchistan, I envisage the future to be one where the Federal Government has no direct charge of any Province whatsoever. I make one exception. The Capital of the Federal Government is a different thing altogether. The Capital of the Federal Government has always been, in several Federations, in direct charge of the Federal Government; so that New Delhi will be in charge of the new Federal Government, but Old Delhi will go back into the Province to which it originally belonged. The complications which would arise under any other system are obvious. At the present moment, Ajmer-Merwara, for instance, is centrally administered. Its Budget is referred to the Central Government, and a Member represents it on the Central Legislature by nomination. In the future Federal Legislature we are going to have representatives only from the Provinces and States which form part of the Federa-

tion. I do not see what the position of Ajmer-Merwara will be—nomination being ruled out of the question. I do not know whether we ought to make special provision for the representation of Ajmer and Merwara alone.

Chairman: Can you group?

Diwan Bahadur Mudaliyar: We cannot group for this reason. Even if Ajmer and Merwara were to have one Member, Coorg is too small to afford to have one Member.

Chairman: What is the population of Coorg—163,000?

Diwan Bahadur Mudaliyar: About that. It may not be possible to group Ajmer-Merwara with Coorg at a distance of a thousand miles and with nothing in common.

H.H. The Maharaja of Bikaner: Could not you take Ajmer-Merwara into the United Provinces?

Sir Tej Bahadur Sapru: The question about Ajmer-Merwara has several times come up before the Government of India, and I suggest that you should obtain information on that point, Sir. As a matter of fact, the proposal was at one time that Merwara should be attached to the United Provinces and become a part of the Ambala Division, and it is by no means impossible to do that.

Dr. Shafa'at Ahmad Khan: The United Provinces Government refused that.

Sir Tej Bahadur Sapru: And so far as the traditional administration of Ajmer-Merwara was concerned, the Court exercised a certain jurisdiction in regard to certain matters. I have practical experience of that.

Mr. Iyengar: I would only say that, with regard to each recommendation on these things, we were not discussing the question as to whether there should be any federally administered areas. If they exist they should be borne on the Federal estimates. That is the only thing we are saying.

Diwan Bahadur Mudaliyar: I am only anxious to put forward the converse proposition, that our acceptance of this Report should not mean that we are committed to the administration of these areas. On the other hand, at some stage I hope that this Committee will decide whether there should be these centrally administered areas or not.

Dr. Shafa'at Ahmad Khan: They will have to, later on.

Diwan Bahadur Mudaliyar: I was mentioning Baluchistan, the Andamans and other places which, if we proposed to maintain them as such, would have to be centrally administered; but other areas, like Coorg and other places, will have to be absorbed in some Unit or other of the Federation. As regards paragraph 25, Commercial Departments, I would only emphasise what Sardar Ujjal Singh has said, that on another occasion some of us emphasised the establishment of a statutory Railway Authority, without further reference to this question. If, by a statutory Railway Authority is meant a

body which would come into existence by a Statute of the future Federal Legislature, I would have no objection; but if by that is meant a body which will be brought into existence before the Federation comes into existence, I should like again to enter my caveat against that position.

That is all that I have to say.

Lord Peel: I should like, if I might, to say two or three words. I will not keep the Committee at all long, but unfortunately I cannot be here to-morrow morning, or I should have had perhaps to detain the Committee for twenty-four hours or so with a reply to all the very difficult and detailed points that have been raised; and therefore I will only be now quite a few minutes. I think that the sub-Committee can congratulate themselves that there is general assent to the principles which have been laid down. I think, so far, that is very satisfactory. I also listened very carefully to all the multitude of criticisms that have been brought to bear upon the Report, and I have come to the conclusion—it may be a rather arrogant one, perhaps, from the point of view of the sub-Committee, but it is a collective arrogance—that the difficulties and the points that have been made by so many critics have been rather due to the very difficult and complicated nature of the material with which we were dealing than to any shortcomings in the sub-Committee itself. I feel that one thing that some of the speakers possibly may have missed is this. They were pressing very strongly certain points of view, many of them very logical points of view indeed; but the Report we have presented to you was the result of deliberation between a number of men representing very different points of view, and therefore you must accept—if you will accept—the Report as the result of a compromise very largely between those views, in which no side really carried out all the views with which they had originally started, but in which they showed a great deal of good will and sense of compromise in reaching these results. That is very largely an answer to many points that have been pressed by the different members of the Committee.

I do want to say something by way of reply to the points which have been raised in different forms, first of all against the appointment of this Expert Committee, and secondly as to some of the duties with which it is proposed to be entrusted. First of all, I may say in passing that the word "determine"—perhaps a bad word to use—quoted by Pandit Malaviya, does not mean in any sense final determination. All the suggestions made by the experts are liable to acceptance or rejection; there is nothing final, of course, about what they say. But there has been some anxiety exhibited on two grounds. One is that, by the appointment of the Expert Committee, there might be considerable delay, which delay might militate against the drafting of the Bill and its passage through Parliament. I think that has been the main ground on which the objections have been raised to the establishment of this Committee. It is quite true that Pandit Malaviya took rather a different line—perhaps I may be allowed to say, a more subtle line

—because he did not so much criticise the setting up of the Committee as the fact that a number of subjects to be entrusted to the Committee were not suitable for consideration by the Committee itself.

There are two or three observations I should like to make on that Committee. The first is that I think the length of time which that Committee might take to do its work—I am talking of the working out of general financial principles, and not the other question of dealings with the States—has been the subject of some exaggeration. Also, there has been exaggeration as to the size or extent of the tasks with which that Committee might be entrusted. I urge upon this Committee that they should agree to the setting up of the Expert Committee because it is the natural and necessary sequel to the work done by the Finance sub-Committee itself. It was suggested by Mahatma Gandhi that this Report should be referred back in order that it should set out clearly what were the general points or principles on which we were agreed and possibly go a little further into some of the details. I accept the compliment Mahatma Gandhi paid to the sub-Committee in wanting to reconstitute it and give it a further term of office, although I must say that the suggestion does not arouse great enthusiasm in my breast. But I think the Chairman of the sub-Committee is possibly the best person to pronounce judgment on that kind of suggestion. One of his most difficult duties in a matter of this kind is to decide as to the limits within which such an investigation should be carried out. On the one hand, the investigation may be too narrow, on the other hand, it may be too wide, and it may go over into almost infinite ramifications. The Chairman's duty is to steer, if he can, a sort of middle way in which he lays down, or gets the Committee to lay down, the principles as definitely as possible, without as it were going into all the different side-channels. Moreover, in the course of the investigation, it comes very forcibly before you that, however careful you are in words to lay down your definitions and your principles, yet they must be subject to various other investigations, to figures and to facts which were not and cannot very well be at the disposal of a committee working within the limits within which our sub-Committee worked. To finish and to perfect —if I may use the expression—the work of the sub-Committee, you want an Expert Committee which would deal with these figures and so on and work out the exact conclusions in figures that arise from the principles themselves.

The question has been raised of whether you can formulate exact Budgets. That is, of course, an extremely difficult thing to do, and that in itself, no doubt, must be a limitation on the work of the Expert Committee; but I think that, with the facts and figures that should easily be laid before it, a very small committee working in that way should not take more than four months to do its work. I do not think that work of that kind could possibly delay either the framing or the setting up of a constitution. Obviously there are other things to be done as well—franchise enquiries, and so on.

I believe, on the contrary, that if you did not set up a committee of that kind, there would be considerable delay when these matters came to be discussed in Parliament, because they would not be sufficiently defined, and that would lead to discussion and to delay.

The other point on which much has been said, and which is involved in the same question, is this. Would it not be better to leave a number of these points to the subsequent consideration and decision of the Federal Government itself? It is said that, the general principles having been decided, these other matters might be worked out in that way. Now, I am limiting my observations to remarks made really in my capacity as Chairman of the sub-Committee; I am not speaking with any wider authority than that. I think it must obviously be a matter of consideration afterwards as to which of these questions must be settled and dealt with before they can be embodied in the Bill itself, and opinions, I think, must inevitably differ as to the extent to which some questions may be left over and others must be decided on; but there are two things I should like to say. There is such an immense amount of work before the Federal Government when it is established that I think it would be grateful if as many of these questions as possible are decided beforehand.

Pandit M. M. Malaviya: If Your Lordship will excuse my interruption, will you mention one or two matters which you think should be decided before the constitution is framed?

Lord Peel: I will try to mention one or two things. I was just coming on to that point, in fact. It has been borne in on me very strongly, not only by my experience in the Conference but also by my experience in the sub-Committee itself, that there does prevail a very great anxiety amongst the representatives of the different future constituent elements, both Provinces and States, to know where they stand from a financial point of view. I need hardly mention the question of autonomy in the Provinces and the question of contributions by the States. I cannot help thinking that it will assist the formation of the Federation enormously if you are able to embody very substantial propositions as regards the divisions of finance and other matters, the allocation of the heads of revenue between the Federal Government and the Provinces, before you set up your Federation. I do not say you will ever see a complete picture, but I think it is obvious you want to see the picture as complete as you reasonably can; because I may remind my friends of the necessity for confidence, which, after all, is the greatest thing in all constitutions and the working of constitutions. You should start the constitution, therefore, with the very largest measure of confidence that you possibly can; and therefore, though I think it is very likely that some things may be left over, yet I think some of those essential things on which I lay great stress, such as the allocation of the heads of revenue, must, very largely, be embodied in the constitution.

I frankly own that my personal opinion was that rather more elbow room should be left to the Federal Government than most

of my colleagues were ready to concede. They were very anxious that all the different heads of revenue should be specified and allocated between the Federal Government and the Provinces. Indeed, we had something in the nature of a question about these residuary or unspecified powers, a battle which seemed to me largely of academic interest from a practical point of view, but over which there was a very keen dialectical contest. Therefore from the point of view of separating what we can and getting as much of a picture as we can and as much confidence as we can, it seems to me that three or four months would certainly not be wasted, would delay nothing, and would be usefully employed by an Expert Committee which had the facts and figures before them in trying to shape our principles into practical form and presenting them so that people would know what they were like before they were embodied in the constitution.

I should just like to say one word more, which I think may elucidate the position, by describing the way in which the idea of the Expert Committee arose in our minds. As we proceeded with our work we found that, here and there, and by the way, there were a great many issues—a great many avenues shall I say—which wanted examination, and with which really we could not deal, I will not say with the capacity at our disposal, because we had great capacity at our disposal, but with the limited amount of time and with the limitation of knowledge and of detail which we had before us. Then, as we proceeded with our investigation the duties, I am bound to say, of this Expert Committee began to grow. Then we thought that, if they were all given to one committee, the time would be rather long in which that committee would be occupied; and we decided to divide it into two committees, with the Chairman as a possible link between them, because the two things are connected together. But I think there is a very clear distinction which the Committee might bear in its mind between those subjects which have to be pretty closely dealt with in order at least to be embodied in the Bill itself, and other matters—some of the negotiations, for instance, with the States—which one would like to have settled if possible, but which I quite agree may take a considerable time. They may take a considerable time for this reason—because, of course, you cannot negotiate with the States as a body, as is well known, but you have to deal with each State individually. Speaking generally, I should certainly not like to commit myself to the point that there should only be one Expert Committee dealing with these matters. It may be there will have to be more than one; it may be that individuals will carry it out; but I will not stop in matters of that kind. I think that the distinction is clear between the work of the one committee and the work of the other.

I do strongly urge the Mahatma that he should not press upon us the duty of carrying out any further investigation of these principles, because I honestly think that we have done as much as we can in that respect, and that it would be a pity to break up, or to run the chance of the breaking up of, a compromise which was only

reached after a very careful discussion and a great deal of give-and-take on both sides. I do not think, therefore (and I think on investigation I shall prove to be right), that the setting up of this committee, and its investigation and its Report, would prove to be any obstacle, or cause any delay, to the drafting of a Bill and the bringing it before Parliament. I therefore strongly urge that our proposal in that way should be accepted; and on behalf of the sub-Committee I am most grateful for the way in which our general proposals have been received.

Sir Tej Bahadur Sapru: May I be permitted to ask a question of Lord Peel? Will he please tell us what will happen in three or four months, when the Report of the Expert Committee has been submitted to us? How will the agreement between the Indian States and British India then be arrived at? What is the machinery that he contemplates for that?

Sir Muhammad Shafi: "Submitted to us"—what does my friend mean by that? You said that when, three or four months hence, the Report is "submitted to us"—

Sir Tej Bahadur Sapru: No, Sir Muhammad; probably you thought of it in your own mind. I said, what is to happen when the Report of that Committee has been submitted?

Lord Peel: Has been submitted? Well, I quite follow your question, but I find some difficulty in answering it, because, of course, if the Report of that Committee, as I think it probably will, dots the i's of the principles to be laid down, and shows the way in which they can be carried out, then I suppose that our general proposals will be embodied, so far as they can be embodied, in a Bill.

Sir Tej Bahadur Sapru: You appoint a Committee now. That Committee sits and works for three months. It reports to somebody or other in the world. How are the two Units, the British Indian Provinces and the Indian States, to come to any agreement on that; or is it to be independent of agreement and to be imposed upon the Federation? That is really the difficulty that I feel. There can only be one answer to that, I submit—namely, that you must call a third Conference, as has been suggested by Dr. Shafa'at Ahmad Khan and Sir Muhammad Shafi; but if that is the proposal, that you must call a third Conference, then frankly we owe it to ourselves to discuss that matter. I thought Sir Muhammad Shafi used the words, "God forbid that we should have a third Conference." That is more or less our sentiment. If we are having a completed picture, I want to have a completed picture of that proposal.

Lord Peel: Well, you are asking me. I am sitting here for the moment merely as Chairman of the sub-Committee.

Sir Tej Bahadur Sapru: But you must not give us an incomplete picture if you want us to accept your picture.

Lord Peel: Well, it is only an incomplete picture in the sense that we have laid down the principles; and I do not know that a

great Conference of this kind can do more than lay down principles, can it?

Chairman: Lord Peel will do the picture. Then we shall want a frame to put the picture in. We must see what we can do to get the frame.

Sir Tej Bahadur Sapru: I do not know what the proposal is.

Lord Peel: I think I cannot answer that.

Chairman: The point which Sir Tej Sapru has raised is one which will have to be considered.

Sir Tej Bahadur Sapru: If the Government have got some proposal in connection with it, then it is fair that we should know what that proposal is before we are invited to accept the proposal.

Chairman: What do you think would be the best thing, Sir Tej Sapru? What do you suggest should be done? Perhaps you would like to reply to-morrow.

Sir Tej Bahadur Sapru: I will reply to that to-morrow. If any machinery can be suggested to me for bringing about the agreement between that bloc and this bloc at the end of three months, I should like to consider it; but it is no use your saying that you are putting off the thing for three months or four months, and then you withhold your consent until then. Consent has got to be arrived at at some stage or other—unless, of course, the idea is that the consent of the two parties is not wanted, and that it will be His Majesty's Government who will impose their decision on both, in which case it is not the idea of federation.

Sir Akbar Hydari: It is not merely agreement of the two parties, Sir Tej. As I understand, in order to draft your financial provisions, even if we all agreed, you would have to have certain enquiries.

Sir Tej Bahadur Sapru: I have not the least objection to that suggestion of yours, but I do say that that presupposes that you and we have agreed to certain principles, and having agreed to certain principles we leave it to the experts to work out the details. I have not the least objection to that proposal; but if there is no agreement on the principles, then everything is in the air, and I want to know then, how do we come down to any concrete proposals for purposes of agreement?

Sir Akbar Hydari: Those principles are not enough.

Sir Tej Bahadur Sapru: What happens then, Sir Akbar? That is what we want to know.

Sir Akbar Hydari: I will explain; but our difficulty is that, and I think Lord Peel has very well brought it out.

Pandit M. M. Malaviya: I should be very grateful if Sir Akbar Hydari would explain his scheme. I am very anxious to know at what stage you want agreement, and how that agreement is to be arrived at.

Sir Akbar Hydari: I want to make it quite clear that it is not merely a matter of agreement, but we really have not sufficient data for agreement. That is the point. There will have to be certain data collected, and I say that this is necessary even on the British Indian side, unless it is proposed to construct your Federation keeping to yourselves whatever revenue you have got.

(The Committee adjourned at 4-40 p.m.)

PROCEEDINGS OF THE THIRTY-SIXTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 16TH OCTOBER, 1931, AT 11 A.M.

HEAD 4.

Distribution of Financial Resources between the Federation and its Units.

DISCUSSION ON THE REPORT OF THE FEDERAL FINANCE SUB-COMMITTEE—*(continued).*

Chairman: I just want to announce one thing, if I may. As a result of yesterday's discussion—and I think it will be assisted by the discussion of to-day—I am very glad to say that the various parties interested desire to meet on Monday, when I think there is a very good chance—and I say a very good chance, because I have seen the parties—of coming to almost complete agreement—anyhow, to a very large measure of agreement on this Federal finance question. I am very gratified by that, if you will allow me to say so. I quite see that there is a great deal to be said for both parties. It rather reminds me of what I used to feel when I was a Judge. After the plaintiff had sat down I always thought he was right; after the defendant's counsel had sat down I always thought he was right; and when the plaintiff had replied I did not know who was right! Anyhow, I am very glad to think that we shall probably get a settlement on this particular matter, although we do want to hear the views of one or two people this morning. In order not to waste time I suggest that we might finish the debate this morning (it will not take long) and then I want to put before you a few notes on the subject of the Federal Court. I would like to place these notes before you so that you will be in a position to consider them during the week-end.

Sir Mirza Ismail: Lord Chancellor, I think there is considerable force in Mahatma Gandhi's suggestion that the Report be referred back to the sub-Committee with the direction that it should try and lay down such general principles and make such definite proposals as would be acceptable to the States. If I understood him correctly, his main object—his real desire in suggesting this procedure—was to secure agreement on certain essential principles and on proposals which the States would have no hesitation in

agreeing to. Speaking for myself, I see absolutely no reason why the States should have any hesitation in agreeing to most, if not all, of the general principles so ably stated by Mr. Rangaswami Iyengar in the course of his remarks at our meeting yesterday. The great thing is that the work of this Conference should proceed smoothly, uninterruptedly and rapidly. Definite conclusions should be recorded wherever possible, so that we may know where we stand. The settlement of various details entailing adjustments may come later; indeed, we all know that no State stands irrevocably committed to the idea of Federation. Nevertheless, we must proceed—and we have all along proceeded—on the assumption that there is to be an all-India Federation comprising the States as well as the Provinces. Otherwise, what would be the alternative? Is the work of the Conference to be held up, and the drafting of the constitution to be delayed, until such time as every one of the 500 or 600 States has been consulted and has agreed to every one of the proposals, to every detail of the scheme? While this Conference does not, I believe, expect each and every State to make a definite declaration that it will come into the Federation whatever might be the conditions attached to its entry, it has a right to expect the States to agree to the main outline of the scheme and to certain essential principles at once. Such States as are dissatisfied with the scheme that finally emerges in the form of a Parliamentary Bill will be at liberty to keep out of the Federation. The time for a final decision will come when they are asked to sign a Convention to that effect. Until that time they are absolutely free.

It is scarcely necessary for me to add that the more attractive the scheme is made for the Indian States the larger the number of adherents it will secure. We may be sure that, bearing this aspect of the problem in mind, both the British side and the British Indian section of this Conference will endeavour to make the completed picture as pleasing as possible to our eyes.

Colonel Haksar: In view of what you announced this morning, I think I may be permitted to reserve my remarks until Monday, by which time I hope that not merely a large measure of agreement, but possibly complete agreement will be attained between us.

H.H. The Chief of Sangli: My Lord Chancellor, I think it will be appropriate if I speak a few words, as I represent here a large number of the small States. In this capacity, and voicing their feelings, I reiterate what His Highness the Chancellor of the Chamber of Princes and His Highness of Bikaner stated yesterday—that the States are whole-heartedly in favour of the idea of Federation and will do everything in their power to assist in the realisation of the ideal. We are all keenly interested in setting up a system of Federal finance which will enable the Government of the future Federal India to discharge its important functions efficiently and well, and at the same time will be fair to the Units concerned. If I may say so, the smaller States, with their limited resources, are even more vitally interested in this question than other Units.

The Finance sub-Committee has done its work in an admirable spirit and deserves our congratulations. I am glad that the sub-Committee has laid down, and that this Committee has accepted, that there should be an equitable apportionment of burdens on the Units. In paragraph 18 of the sub-Committee's Report, the question of the States' contributions—cash payments and cessions of territory—is dealt with. I feel confident that the adjustment of this question will not present any special difficulty. In this connection, I should like to express my agreement with what Diwan Bahadur Krishnama Chari stated in his speech in the sub-Committee on October 2nd on these issues. I am glad that the abolition of cash payments has been agreed to and endorse the appeal made by Sir Mirza Ismail on this subject. Speaking specially with regard to the States that have ceded territories in lieu of cash payments originally fixed, these are only a few in number—four or five. And they are amongst the most convinced advocates of Federation, and will, I am sure, readily agree to an adjustment which would be eminently fair and reasonable to both sides, and which need not delay in any way our proceeding with the new constitution. My object in referring to this is to assure my colleagues here that these questions are by no means difficult or complicated, and that, if an equitable adjustment of them is easy of attainment, the States are as anxious as British India that there should be no impediment to the realisation of the idea of an all-India Federation, in which we all believe and for which we are all working.

My Lord Chancellor, I shall not detain the Committee any longer.

Sir Akbar Hydari: I have considered very carefully the suggestion coming from Mr. Gandhi that this should be referred back to the Finance sub-Committee again. I want simply, and in a very few words, to explain what really our position has been. Let me assure Mr. Gandhi that we did try to see whether we could produce a minimum Federal scheme as we thought. He will remember that we had already agreed in the Federal Structure Committee as to certain sources of revenue, like Customs and Salt; and if, with these sources of revenue, we could have produced a balanced Budget, there was nothing better. If you remember, I said—and I say it again—that, if you are going to confine yourselves to the present revenue and expenditure of India as they are, to the burdens on the Provinces and the States which exist at present, without any compensation one way or the other and without the imposition of any fresh burdens, I for one will not object to a financial settlement of that kind and to starting the Federation on that basis as a final settlement. But what did we find when we had all the papers before us and when we went into Federal finance? We found that neither the British Provinces nor the Indian States were prepared to go into the Federation with the existing burdens both on the British Indian Provinces and on the States. It was contended—and the contention, Mr. Gandhi, was especially on the British India side—that even the existing financial position was

such that it was absolutely necessary on grounds of financial stability for the new Federation to have access to fresh sources of taxation. The difficulty was brought out very clearly in the Memorandum on Federal Finance of the Government of India, which was placed in our hands. At the top of page 13 of that Memorandum, you will see that it says:—

> "The main point which energes from these specimen budgets is that, as a result of treating Income-tax receipts as available for distribution among the Provinces—subject only to the deduction of a fixed sum to meet 'Central' charges—a balance would be released for the benefit of the Provincial revenues, while the Federal Budget would be left with a deficit . . . . On the basis of the picture thus presented the chief practical points for consideration must be: (1) Whether such a deficit on the Federal Budget could be met. (2) Whether the result arrived at is really fair to all members of the Federation."

It was because these were the points placed before us that we had to go into different matters, and we came to the conclusion that a reply to these questions could not be made except with the assistance of experts. I repeat, therefore, that if you confine yourself to starting with the existing burdens on all alike and do not impose any fresh burdens on any of the Units in any case whatsoever, and if you put that in the constitution, then I for one have no objection; but, as I say, you are not prepared to do that, and for one very good reason, namely, that you will not have a balanced Budget and you want to avoid the pitfall to which Lord Lothian so eloquently, so pertinently and so clearly referred yesterday, namely, the pitfall of concurrent jurisdiction. There is a necessity for having in the Federation everything specific, so as to avoid a wrangle such as might occur on the very first day when the Federal Budget is presented with a deficit which you have to balance.

Mr. Rangaswami Iyengar, who knows that I have a great respect for all his views, in supporting the proposal to send back the Report to the sub-Committee said that such and such things could be embodied in the constitution. I say that those things, if they are sufficient, could be embodied in the constitution without referring the question back to the Federal Finance sub-Committee. But what are they? He says we start on the assumption that the replacement of the present Government by the Federal Government is not to involve any disturbance of the existing position. If it means what I have put down, I have nothing to say; but he says that it might be drafted in the following form:—

> "Parliament shall have power to levy taxes, or duties for imports in accordance with the allocation of resources hereinafter made as between the Federation and its Units—Provinces, States and Territories—save as hereinafter provided, and until Parliament shall otherwise provide in accordance with the procedure hereinafter laid down, the existing distri-

bution of resources, between the Federation and the various Units, shall continue undisturbed."

So that he himself in this clause also provides for something which will have to happen hereafter, and to which we shall have to agree after we have constructed the Federation. Take his second point:—

"We may provide on an agreed basis that there shall be paid out of the revenues of the Federation the interest and debt charges, subject to scrutiny and expert enquiry."

Take his third point:—

"The revenues shall be from sources of Federal and Provincial taxation, the resources of the Indian States being specified or not as the case may be, but with their present rates."

There is another very important clause:—

"In cases of grave emergency and for the protection of the credit of the Federation, the Federal Government may, with the assent of the Federal Parliament, call for contributions from all Units of the Federation in the manner hereinafter to be agreed upon."

Lastly he asks:—

"As soon as may be after the coming into operation of this constitution, a Commission shall be appointed who shall investigate and report on the following matters to the Federal Government for such action as it may decide to take on the advice of Parliament."

These are all things which, if I may say so, cannot be left to an expert enquiry hereafter. Most of them are such that you will have to decide upon them from the very beginning. It was the demand of the British Indian Provinces that we should not content ourselves with only the taxes which have been agreed upon as Federal, but that we should go beyond them and have "direct" taxes, like the Corporation tax and others, put on. Personally, so far as I am concerned, speaking for Hyderabad, I have no objection; but most of the other representatives have very strong and very valid objections. It is merely a question of justice whether what we are being asked to agree to shall not be placed clearly before everybody before he is asked to agree to it. I hope, therefore, that everybody will agree that either you put in the constitution vague, general phrases, or you put into the constitution specific decisions which avoid the pitfall of concurrent jurisdiction. For the former case what you have done already—your Report of the sub-Committee—is sufficient. It is being referred back to the Finance sub-Committee and will not need to go further. For the latter, it is necessary that you should have some Expert Committee with regard to at least some points that are absolutely essential for making your financial provisions in the financial chapter of the constitution sufficiently definite to enable everyone to say that a really definite, concrete proposal and scheme of Federal finance is before the people who have to decide.

Chairman: Would you kindly help me with regard to one thing which is a point of drafting? It is really not controversial at all. Which do you think would be best? It can be done in two ways. Do you think it is best to keep the actual part of the constitution as short as possible, and instead of putting them in a chapter to put finance and various other questions in the schedules? Which do you think, as a matter of drafting, is more convenient? You see, what you could do is this. You could draft a pretty short constitution on the constitutional things, and then you could, if it is a matter of convenience, put a number of these questions, like finance and like the franchise, and so forth, into schedules.

Sir Akbar Hydari: I think that probably schedules would be the better course. The only thing is, what will be the reference to the schedules as regards any alteration—I mean, so far as any change in it is concerned, whether the change would be subject to the same procedure as is necessary for the main portion of the Act or not? It would depend on how you put it.

That is really the position. I am quite prepared to go on on the existing basis if you fix upon it as being the final one and provide for anything beyond through the taxes which have been already federalised; but that is not what British India considers sufficient. It has, and quite rightly, I think, considered that it has to provide for various definite elements in the Indian finances that exist at present, and also for emergency powers and for powers for balancing the deficit. All that requires an exploratory committee, and really we are in that way not obstructing federation, we are not delaying federation. As we proceed with our work there will be several exploratory committees of this kind which will be required before you can frame your constitution. What about the distribution of seats to the States *inter se?* This will require an exploratory committee. There will be several other committees as we go on; and, after all, if it is a question of three or four months, what does it matter, because how I envisage the whole thing is this—and I am here coming to the point which was raised by Sir Tej Bahadur Sapru—and what I feel, with regard to these exploratory committees, is what will happen to their Reports? That is a pertinent question. As I envisage it, the future conduct of our work will be somewhat as follows. His Majesty's Government will consider the Report of the Conference; they will consider the Report of the various Finance and other Committees which are set up; and, on the basis of all this, they will be able to put up a draft Bill which I consider to be the "picture" which will have to be presented to us. This draft Bill will be presented, I take it, according to precedent, to a Committee of the two Houses, and it is at this stage when we also may consider the picture and submit it to discussion. In any case, there will be a definite time when the picture, in so far as it can be completed, will and must come up for consideration by the representatives at least of the Indian States. Therefore I say we have accepted the Report of the sub-Committee so far as it goes, but with the material at its disposal it could not go further.

That is what the Expert Committee must be set up to supply. For the progress of the work of the present Conference, as I envisage it, within the time at our disposal, the agreement reached in the sub-Committee is sufficient to go upon. I say all this because I feel it is unnecessary to send the Report back to the sub-Committee. It is necessary that there should be an exploratory Committee before the constitution can be drafted, as has been clearly laid down in paragraph 4 of our unanimous Report.

But, in view of what you, My Lord, have said, I shall take my own share in trying to arrive at some possible common ground and to reconsider the position on Monday. At present I do not see, unless you are prepared to accept the present burdens as they are, and implement them as they are, binding yourselves only to the Federal taxation to which we have already agreed, how you will avoid what Lord Lothian has called the pitfall of concurrent jurisdiction, with regard to which most Federations have had so much trouble.

Sir Tej Bahadur Sapru: In view of the announcement that Your Lordship has made this morning, I do not propose to make any long or detailed speech on the question which has given rise to so much discussion in this Committee, more particularly because I am anxious that the task which we have in view should not be prejudiced by any statement I may make on this particular occasion. But perhaps Your Lordship will permit me to remind the Committee of one or two essential conditions which have brought this Conference and Committee into existence, and which we are apt to forget in the midst of detailed controversy. I cannot help feeling that this Conference was invited by His Majesty's Government—the Labour Government, I mean—on certain definite terms; and one of the terms on which it was invited was that, instead of Parliament imposing a constitution which it thought best suited to the interests of India, we, the members of this Conference, including His Majesty's Government, should make our best efforts to arrive at the maximum amount of agreement. Therefore, I say that that is an objective which we have constantly got to bear in mind. It may be that one of us, or one set of us, holds very strong opinions on one particular question. Similarly, it may be that another person or another body of persons in this Conference holds equally strong opinions on the other side. But, if each one is to hold to the strong opinions on his side and to refuse to see the point of view of the other side, then I venture to think that the object of this Conference, namely, the maximum amount of agreement, can never be achieved.

I regard it as essential, therefore, that it is we who should apply our own minds to the settlement of the questions which divide us. We cannot allow, and ought not to allow, any other mind to be substituted for our mind. Therefore it is that I say that, if there are any questions of principle on which there is difference of opinion, we must arrive at an adjustment by applying our own minds rather than by trusting to the minds of any outside body, howsoever

distinguished it may be and howsoever qualified it may be from an expert point of view. It seems to me, therefore, that if we can arrive at an agreement on certain questions of principle, we ought to accept those principles as agreed principles and allow them to be made the basis of the constitution. The other day, when I was speaking, Mr. Jinnah said "Where is this scheme?" My answer to that is that it is for us to bring the scheme into existence. When I remember that Lord Peel's sub-Committee sat for days together and arrived at the Report which we are considering, I feel that that Report contains so many principles on which there was agreement that I venture to think we ought not to hesitate in expressing our agreement with them in this Committee so far as they go, and asking you to accept them as the basis of the constitution. If there are any outstanding questions, not of the character of principles but of the character of details, we can devise appropriate machinery for the working out of those details; but, whatever be the machinery that we devise, and whatever be this settlement that may have to be arrived at, let us not forget that it will be a settlement arrived at between the Indian States on the one side and British India on the other side.

It is not fair to His Majesty's Government, nor to the Indian States, nor to British India, that we should shirk our responsibilities in this matter and say to His Majesty's Government—"Somehow, and in some way or other, you should arrive at a decision for us, because we cannot apply our minds to this question." I therefore, with all respect but with all the emphasis of which I am capable, ask Their Highnesses to remember that it is they on their side and we on our side, just as much as His Majesty's Government, who will have to discharge that responsibility and that function. To say, therefore, that we may appoint an Expert Committee and leave it to His Majesty's Government to arrive at some sort of conclusion, is to deprive ourselves of the privilege of deciding for ourselves and to go against the terms on which we were invited to meet. It is for that reason that, I venture to think, Mahatma Gandhi puts forward his proposal. I am not afraid at all of the incapacity of Lord Peel's sub-Committee to arrive at some definite conclusions if they apply their minds to them. I do not share the despondency or the diffidence of one distinguished member of that sub-Committee—I mean Sir Maneckjee Dadabhoy. I believe there is enough common-sense and enough statesmanship in that sub-Committee to see that it is they who have to advise us on the questions of principle on which they have not yet made up their minds or on which there may be occasion for further discussion.

There is only one way of getting out of Mahatma Gandhi's proposal, and that is by coming to conclusions amongst ourselves. Well, I entirely endorse the remarks made by Sir Mirza Ismail this morning. His remarks are of the most hopeful and, from my point of view, of the most helpful character. While we may think that we should appoint a committee to explore avenues for

us in the distant future, or it may be in the near future, I do agree with Sir Mirza Ismail that it is up to us to explore avenues ourselves and to arrive at certain conclusions of a concrete character, and then to appoint some sort of machinery which suggests itself to us as the most suitable machinery for the working out of principles upon which there is mutual agreement among ourselves. I will therefore beg this Committee not to shirk the responsibility. That responsibility may be discharged either in the manner suggested by Mahatma Gandhi or by a further exchange of views, and I feel confident that, when we exchange our views, we shall find we are nearer to agreement than we imagine in the midst of this controversy. I refuse to believe, notwithstanding the criticisms made in certain quarters, that there is less enthusiasm among the Princes about Federation than there was on the last occasion. Similarly, I refuse to believe that there is less enthusiasm on this side of the Committee about Federation than there was last year. We all stand by that idea, and it is up to us to discuss our mutual differences so that we may, before we disperse, be able to present to the Lord Chancellor and to his colleagues on the Cabinet an agreed solution of this particular question. I refuse deliberately to go into any one of the issues involved in this matter, because I would leave them to be discussed in a friendly manner by all of us within the next two or three days, and then come back to the Lord Chancellor and say " Here is an agreed solution ".

Mr. Gandhi: My Lord Chancellor, in view of the impending conversations between Their Highnesses or their representatives and Delegates on this side of the table, perhaps it is unnecessary for me to say anything in defence of the suggestion which I had the privilege of making before this Committee; but I would be unjust to Lord Peel and unjust to Sir Akbar Hydari (and I have listened with all the respect and attention which anything that Lord Peel or Sir Akbar Hydari might say deserves) if I did not confess that I am unconvinced and that I remain unrepentant. It may be that I am too obtuse to realise those difficulties; it may be that I am too impatient to see something concrete before us to see those difficulties; but I also know that I have confidence enough in myself and my countrymen to believe that we are well able to bear the burden and the responsibilities that self-government would impose upon us, and therefore I am not baffled by difficulties, real or imaginary.

But I want to apply my very simple mind to this question of apportionment of the revenue and the expenditure of the Government of India. We have been talking about principles. Well, I have really failed to see many principles in connection with the work before us. There is certainly one principle—namely, on what standard are we going to apportion the revenues and the expenditure? There certainly we shall have to come to some rough and ready principle on which we should decide; and that principle, as I visualise it before myself, is whether the British Indian part of India is to shoulder any additional burden beyond what it shoulders to-day by reason of Federation, and likewise whether the States

are to do so, or whether, in entering upon Federation, each party will refuse, say, for the time being, to take over any further burdens. That, to my mind, would be the principle that would guide us in coming to an apportionment of revenue and expenditure.

The difficulty, therefore, really, that has appeared to me as a result of having listened to all these discourses, is one not of principle, but rather, if I may respectfully put it, of disinclination. If we have got the determination that we want Federation, that we want Federation at any cost consistently with the self-respect of each party, or each partner—if we have that determination I again, as I say, as a simple man, a layman, can see no difficulty whatsoever. All we have to do is to find out those heads of revenue which we can easily understand without any complication, and we set about saying, " These are the heads of the revenue which we shall hold jointly. The balance will go either to the Federal Government or to the Provinces ". That distribution can, in my opinion, easily be made. To-day the greatest difficulty lies in bringing the States' and the other Delegates together and coming to a conclusion. If we lay down the principle that neither party is just now to bear any fresh burdens, we shall divide the heads accordingly; or if there is going to be a little give-and-take, each taking a little more responsibility, we shall arrive at a conclusion in accordance with that principle. Nor do I see any difficulty in finding what items of expenditure we are going to hold in common. If we have come to the conclusion that, at the present moment, we are going to have A, B, and C sources of revenue, we know to-day, so far as our information permits us, that from these three sources we shall get so much revenue. Then we shall take such heads of expenditure as will balance that revenue. I know that our estimate may prove to be wrong; it will be time enough for the Federal Government to decide how it would adjust the difference. If there is a surplus, there should be no difficulty; if a deficit, naturally there would be some difficulty, but not one of us expects that the Federal Government will, when it is launched out on the stormy ocean of responsibility, meet no difficulty whatsoever.

I see that there is a kind of fear regarding decisions by the Federal Government, seeing that, in the Federal Government, up to now, we have pictured to ourselves a majority of those on the British Indian side; so that the fate of the States might be in the hands of that majority. If there is any such fear, we need not have any reservation whatsoever, or we might have some such reservation as I can just now think of, namely, that, unless there is an agreement between a two-thirds majority of the Princes on the one side and a similar majority on the other, there will be no decision taken binding on both sides. I take that by way of illustration as it comes into my mind whilst I am speaking. I simply say that difficulties of this kind need not baffle us, and I feel that we ought to get rid of this incubus of expert opinion at every point. We are, after all, a poor country, and we are not going to get the assistance of experts at every turn.

I think that, in India, we have intelligence enough to understand roughly what we want without having the guidance of experts; and, in my humble experience of things of the world, I have seen that when you go to experts sometimes you founder, because one expert says one thing, another expert says another. And when you come to matters of finance, which are ordinarily too deep for humble folk, these folk do not know which expert's opinion to take; so that they cast lots and trust to the future, saying that they are not going to be buffeted about by these experts. You find the same thing in law, with all deference to the Lord Chancellor.

H.H. The Maharaja of Bikaner: You are a distinguished lawyer yourself.

Mr. Gandhi: That is why I speak from bitter experience. The same is true of medicine. Heaven help us from medical men! Let us get rid of these difficulties that experts cast for us. After all, if we make any mistake, we ourselves will be the sufferers. But if we tread upon this ground with fear lurking in our breasts, we shall not be able to evolve a scheme consistent with the dignity of the great and ancient country that we are. I have therefore simply explained my position as a very simple man before this Committee, so that, when we have these informal conversations, we may approach the question with fresh minds and not with minds full of dread.

May I, as I conclude, respectfully suggest to the Princes that they have come here with their experts also. They have brought their best men here. I will trust myself to those experts, and use my commonsense judgment also if they dare to mislead me. But I shall be entirely satisfied, and in a few hours come to a definite conclusion as to what I want and what I do not want. Hence I remain absolutely convinced that we should either send this thing to Lord Peel's sub-Committee, putting the burden on them to come with a definite conclusion, or, instead of worrying that sub-Committee, some of us should sit together and produce a very humble agreed scheme with which we can start the financial part of the Federation.

Chairman: I want only to say one thing in conclusion, and then, for a few minutes, I shall say something on the question of the Federal Court; and then we shall finish for to-day. It seems to me there are a number of loose ends which will have to be tied up; as, for example, the franchise, the allocation of seats, and Federal finance. The Government will have to consider such matters with a view to any future Bill in Parliament. In drafting this Bill it will greatly help the Government to know how far, on the questions dealt with by these various Committees, there is an agreed Indian opinion. I need not remind you that the fact that there is Indian agreement will be very carefully considered by, and will naturally carry great weight with, the Government, and will make the Government's desire to assist in facilitating a new order of things much more easy of accomplishment.*

* The discussion on Head 4 was continued at the Thirty-seventh Meeting.

Head 8.

The Federal Court.

The following points for discussion in connection with this Head were drafted by the Chairman:—

(1) *Should members of the Federal Court be appointed by the Crown and on what tenure?*

(2) *Should the Court have an original and an appellate jurisdiction, or only an appellate?*

(3) *Should the Court have an exclusive original jurisdiction,* e.g., *in the following matters (non-justiciable matters being excluded)—*

(a) *disputes between the Federation and a State or a Province in any matter involving the interpretation of the constitution;*

(b) *disputes between two States, two Provinces, or a State and a Province, in any matter involving the interpretation of the constitution;*

(c) *the interpretation of agreements between the Federal Government and a State or a Province, or between two States or two Provinces, or between a State and a Province, and any question arising thereunder?*

(4) *Should the Court have an exclusive appellate jurisdiction from State Courts and Provincial High Courts,* e.g., *in any matter involving the interpretation of the Constitution?*

(5) *Should provision be made for special references by the Governor-General to the Court as under Section 4 of the Judicial Committee Act, 1833?*

(6) *Should there be a right of appeal from the Federal Court to the Privy Council as of right or by leave of the Court, the right of the Crown to grant special leave to appeal to be preserved in all cases?*

(7) *What provision should be made for the enforcement of the judgments of the Court in the States and in the Provinces respectively?*

Chairman: With regard to the Federal Court, I should like to make a few remarks for your consideration. You will please understand that I am not saying these are the final solution of the difficulties; all I am putting forward are heads which you will have to consider in coming to a final solution.

First of all, the necessity of a Federal Court as a safeguard to the constitution is beyond controversy, but the value of the Court will obviously depend to a large extent upon the quality and the character of its personnel; and it is accordingly suggested that the Judges of the Federal Court should be appointed by the Crown. The Act will have to prescribe the qualifications of the Judges,

and it may be anticipated that the States will desire that they should be represented in the Court.

On the analogy of most constitutions, the salaries and pensions of the Judges will presumably be non-voted, and they will be given security of tenure.

It seems desirable to appoint some place for the seat of the Court, but considerations of climate and distance may require the Court to sit at other places from time to time. It is accordingly suggested that the Chief Justice should, with the consent of the Governor-General, be entitled to appoint places for the sessions of the Court as occasion requires.

Having regard to the prestige and reputation of the existing High Courts, it does not seem necessary to exclude from their jurisdiction certain matters which, in the case, for example, of Australia, are left to the exclusive jurisdiction of the Federal Court, namely, matters affecting Consuls or representatives of other countries, or disputes between residents of different States, or cases in which a writ of mandamus or injunction is sought against an officer of the Commonwealth. It is accordingly suggested that the exclusive original jurisdiction of the Federal Court should be confined to disputes of one kind or another between the Federation and the various States and Provinces. These disputes may involve questions of interpretation of the Constitution or of a Federal Law, or they may arise out of the interpretation of agreements between two or more States or Provinces. The question, however, of agreements between a State and a Province may need reconsideration, and it may be desirable to insert words here or elsewhere which will make it clear that no paramountcy questions can be brought within the purview of the Court.

If the Federal Court is to fulfil its function as guardian of the constitution, it seems desirable that it should have an appellate jurisdiction from the State courts and the High Court in any matter involving the interpretation of the constitution, and that in such cases the direct appeal which at present exists from the High Courts to the Privy Council should be excluded. It is perhaps questionable whether similar exclusive appellate jurisdiction should be given to the Federal Court in matters arising on the interpretation of the Federal law; but it may be thought desirable to do so in order to attain uniformity of interpretation in such matters. It is suggested that the Governor-General might be entitled, if he should think fit, to refer from time to time to the Federal Court questions of a juridical nature on which the opinion of the Court would be of value. An analogy to this power will be found in the provisions of Section 4 of the Judicial Committee Act, 1833, under which His Majesty in Council may refer to the Privy Council any question of public importance. Stopping there for a moment we have had in the last year two such cases from Canada, one raising the question of whether a woman was eligible for sitting in the Senate, and another, in which judgment will be given next

week, as to the position of the States and the Dominion with regard to the regulation of aeronautics.

Sir Muhammad Shafi: Advisory jurisdiction?

Chairman: Yes, advisory. You will hear what I am just going to say. The decision of the Federal Court on such a matter would not be a decision *inter partes* or in itself constitute an enforceable judgment—it is advisory, as Sir Muhammad said—but, at the same time, its opinion would carry great weight, and the procedure has proved to be very helpful on several occasions—two of which I have just referred to.

In the case of the Australian Constitution, appeals to the Privy Council, from the High Court, in matters involving the interpretation of the Constitution, only lie with the consent of the High Court. In the case of India, however, it seems desirable to provide for an appeal as of right in these cases. In cases where no constitutional issue is involved, it may be thought desirable to restrict the right of appeal to the Privy Council; and it is accordingly proposed that the right should only be exercised by leave of the Federal Court, though the right of the Crown to grant special leave would have to be preserved.

Power to make Rules of Court regulating the procedure of the Federal Court, including provisions enabling the Court to sit in more than one division, are necessary, though it is perhaps a question whether the power should reside in the Chief Justice or in the Governor-General. It seems desirable, at any rate, that no Rules should be made without consultation between the two; and so long as that is secured, it is not a matter of the first importance in whose name Rules are in form made. On the analogy of the English Rule Committee, it might be preferable to give the formal power to the Chief Justice.

The Court will require a Registrar and other officials, and the appointment of these officers will require the exercise of considerable patronage. The matter of their appointment is therefore likely to excite considerable attention, and it is suggested that it would be desirable for them to be appointed by the Chief Justice. Inasmuch, however, as questions of expense will be involved, it is clearly necessary that the salaries and numbers of the officials should be subject to the approval of the Governor-General.

It will be necessary formally to provide that Federal, State and Provincial Authorities will accept the judgment of the Court as binding on themselves when they are parties to a dispute before it, and will also enforce the judgments of the Court within their respective territories. It is similarly necessary to require all the subordinate Courts to recognise and give effect to the judgments of the Federal Court.

Now, these are only general remarks. It may interest you to know the form in which these general remarks might appear in a draft Bill: I will read it very rapidly; it will appear on the notes and you will be able to see it in the form in which, if these or

similar suggestions to them meet with your approval hereafter, it would appear in any Bill. Of course, I have to make some sort of provision for blanks, as you will hear.

> "A Federal Court shall be constituted by letters patent consisting of a Chief Justice and not less than ( ) nor more than ( ) other judges"—

You see, it has got to be filled in—

> "appointed by the Crown. There should be a qualification prescribed for the Judges."

Now, we shall have to put in what the qualifications should be.

> "Provisions of salaries and Judges shall be made, and such salaries and Judges shall be a non-voted item in the Budget."

Now, here is the next suggestion:—

> "Judges to hold office during good behaviour and to be removable only by the Crown, but to be subject to an age limit."

I heard a young friend of mine, with rather advanced views, suggest the other day that no Judge ought to be more than 30; but I think that that is perhaps going too far.

> "The sitting of the Court to be at ( ) or such other place or places as the Chief Justice may, with the consent of the Governor-General, from time to time determine."

Now, here comes a matter which I must read very rapidly, because you will get it on the notes—the jurisdiction:

> "The jurisdiction of the Court to be both original and appellate. The Court to have an exclusive original jurisdiction in the following matters (non-justiciable matters to be excluded):—
>
> "(*a*) Disputes between the Federation and a State or a Province in any matter involving the interpretation of the Constitution Act or any Federal law;
>
> "(*b*) Disputes between two States, two Provinces or a State and a Province in any matter involving the interpretation of the constitution or any Federal law;
>
> "(*c*) The interpretation of agreements between the Federation and any State providing for the exercise of administrative powers and any question arising thereunder;
>
> "(*d*) The interpretation of agreements between the Federal Government and a Province or between two States and two Provinces, and any question arising thereunder."

The next question is a little difficult, because of a form of words:—

> "The Federal Court to have an exclusive appellate jurisdiction from all State Courts and Provincial High Courts

in any matter involving the interpretation of or arising under the Federal Constitution or "—

and Sir Tej Bahadur Sapru will kindly consider this portion—

" any matter arising under any Federal law."

I shall want your opinion on that, Sir Tej.

" Provision for special references by the Governor-General to the Federal Court on the lines of Section 4 of the Judicial Committee Act, 1833.

" Appeal to lie from the Federal Court to the Privy Council as of right in any matter raising a constitutional issue, and in other cases by leave of the Federal Court. The right of the Crown to grant special leave for appeal to be preserved.

" Power to Chief Justice, subject to approval of the Governor-General."—

It does not matter which way you put it; you have got to consider the principle:—

" to make Rules of Court regulating the procedure of the Federal Court, including provision enabling the Court to sit in more divisions than one."

" The officers of the Court to be appointed by the Chief Justice, subject to the consent of the Governor-General as to salaries and number."

" Federal, State, and Provincial authorities, as the case may be, to enforce the judgments of the Federal Court, and all Courts throughout the Federation to give effect to and recognise as binding on them the judgments of the Federal Courts."

Sir Tej Bahadur Sapru: I would like to ask two questions. In the first place, I assume that this Supreme Court will be what is technically known as a Court of Record.

Chairman: Certainly.

Sir Tej Bahadur Sapru: I should like further to ask whether you are going to confine the discussion exclusively to the Supreme Court or open it to the question of the Judicature in India. There are some features of the chapter relating to the Judicature which require very serious consideration. I know that the Government of India are interested in that, and questions have been raised with regard to it in Parliament. If you will give me permission, I will in the course of debate refer to some of the features of the judicial system there, and to the composition of the High Court.

Chairman: I am very anxious that you should do that. The discussion will not be confined merely to the one question. We are very anxious to hear the views of all of you upon that matter, and it will not be a waste of time. A great many of the fears that people have entertained with regard to the Federal Constitution will vanish into thin air if they know that there is a proper Federal Court before

which they can get their rights. I am not saying they are going to be wrong; but I am saying that, in this Federal Constitution, if we get a really strong Federal Court which enjoys a general responsibility, a great many of the fears of the people about the constitution will vanish.

(The Committee adjourned at 12-25 p.m.)

PROCEEDINGS OF THE THIRTY-SEVENTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 20TH OCTOBER, 1931, AT 11 A.M.

HEAD 4.

Distribution of Financial Resources between the Federation and its Units.

DISCUSSION ON THE REPORT OF THE FEDERAL FINANCE SUB-COMMITTEE—*(continued)*.

Chairman: Your Highnesses and Gentlemen, We adjourned on the last occasion in order to give people an opportunity to see if they could come to some measure of agreement upon what we are to do with regard to the Report from our sub-Committee. I understand you have worked very hard and sat up very late, but I do not know exactly what position you have reached. Am I right in thinking that the underlying principles of the Report may be accepted as a general basis upon which this part of the constitution is to be drafted? I am not talking about any exceptions now; of course, we will have to consider those separately. But as a general basis for drafting the future constitution and giving it to our Parliamentary draughtsmen, do we accept the underlying principles of the Report? I gather that we do.

I think the chief difficulty we had was with regard to this Expert Committee. I quite see that there are some questions which will have to be decided—may I put it, so as not to encounter any opposition—somehow, sometime. Personally, I think the sooner the better. I believe we shall all agree upon that. The question that remains would be this. Accepting, as we do, these underlying principles as the general basis upon which we are to instruct our draughtsmen to proceed, let us consider any special matters which we think want rather more attention and which have to be settled in some way. There, I think, possibly we might get some help from the States. I do not know, for example, what we had better discuss first. Sir Akbar Hydari, I would rather like to ask for your help, if I may, with regard to this. I quite see your point. You want to know where you are, but, with regard to future taxation what exactly is the sort of view that you personally (I will not ask you for the moment as a representative of the States) take up with regard to this?

Sir Akbar Hydari: I think it should be specified.

Chairman: What I rather wanted to ask, too, if I might, was this. We are only thinking aloud. Let me put it, so as not to beg the question, in a very sort of man-in-the-street way. Supposing the Federation found it necessary to get a bit more money; what sort of way do you think, or what sort of procedure, ought to be adopted for that purpose?

Sir Akbar Hydari: My position was that, as recommended by the Finance sub-Committee, there should be an exploration of the budgetary position with regard to revenue and expenditure, with a view to seeing how far the taxes which are mentioned in paragraph 10 will have a hope of producing a balanced Budget by having those taxes as Federal, and those others which are there mentioned as Provincial. We must see whether, after this enquiry, there will be a reasonable hope of producing a balanced Budget. Then you must also specify a couple of taxes as marking the field where further sources of revenue might be obtained in case you wanted that for balancing the Budget. The whole point was only this, that our aim is to start with a thoroughly sound Federal financial system, for which a reasonable prospect of having a balanced Budget is an obvious necessity; and it should be so balanced that truly Federal sources of revenue cover truly Federal expenditure, and that, as far as possible, you eliminate all " Central " heads, because we want a unified Budget.

Chairman: Let me see. I am only thinking now of the sort of way in which we should have to draw up the Report, if you will forgive me for just a moment. One, underlying principles accepted generally as a basis. Now, I suppose we should all agree that it is desirable to have a system which would produce sufficient resources to create a balanced Budget. Is that right? Does anybody object to that, or does somebody think that it is not desirable to have a system which would create a balanced Budget? I am only trying to get it down now; we are not deciding anything. In order to do that, should I be right in saying—I will explain it in a moment—that the Federation should have power to levy certain taxes? There is no doubt about that?

Sir Akbar Hydari: Yes. My Lord, I want to make it clear beforehand that I am now speaking as a member of the Federal Finance sub-Committee and as a member of this Committee, without in any way speaking on behalf of the States as a whole.

Chairman: And I want to make it perfectly clear that I am talking without prejudice, and that this is not to be taken down and brought up in evidence against me. The Federation should have power to impose—I do not like the word " impose," but I will use it for the moment—certain taxes for this purpose, that is, for the purpose of creating a balanced Budget. Now, might I just ask this; those are taxes, of course, which the Federation should have power to impose over all Units of the Federation?

Sir Akbar Hydari: Yes. That is essential to the Federation.

Chairman: That is what I thought, too, but I find that every now and then I am beginning to doubt whether Federation is even spelt with an " F."

Now, the next point about it is this. Do you think that there should be some sort of limitation? Mind you, I am only thinking aloud, and therefore I am not in any way laying things down. Some things may be quite impossible. In some cases, as I expect you know, with us, there are various authorities which have the power to impose taxes or rates, which only have power to impose a limited amount, let us say, for example, a sixpenny rate. Do you think that such a restriction—that is, that they should have power to impose a tax of a certain sort, but not above a certain amount—should be imposed?

Sir Akbar Hydari: It would depend a good deal upon what the exploration of the budgetary position revealed, as to how much you require.

Chairman: I rather agree with that, but I will tell you what was in my mind when I asked the question. Suppose you wanted to make up a deficit, and you had authority to impose taxes of three different sorts—A, B and C. If you had no limitation, you might lump the whole deficit on to A. On the other hand, it might be advisable to say, " No, there are other sources of revenue, and we must, in order to make up any deficit, not go beyond a certain maximum in respect of one tax." To put it in the simplest way, if it were a deficit of 1*s.* 6*d.*, instead of lumping it all on to A, it might be separated into sixpences upon each of the three categories.

Sir Akbar Hydari: There are certain taxes that we have already agreed to federalise, namely, Customs, Salt and Opium. With regard to that I would impose no limits. It would depend entirely upon the conscience or sense of financial propriety of the Finance Minister of the time as to how far he would meet the deficit from each source.

Chairman: I should like to ask that question of the members round this table, whether we should all agree that, in respect of Customs, Salt and Opium, there should be no limit upon the power of a Federal Government. What do you say as to that, Sir Muhammad Shafi?

Sir Muhammad Shafi: I think that is a matter probably for the Expert Committee to decide.

Chairman: I think it is. All I am saying is that we should endeavour to get the opinion of members for the guidance of the Expert Committee.

Sir Muhammad Shafi: I would not in any way limit the judgment of the Expert Committee, in regard to a matter like this, by making any observations upon it.

Chairman: Supposing we were to turn ourselves for the moment into the Expert Committee. I am not pre-judging the question at all. I am not saying that there are not some things that the Expert

Committee should look into. But is not that rather a matter of general principle that we could decide? The Expert Committee would have to go carefully into detail, but this is a general sort of question. For instance, would you feel disposed to refer to the Expert Committee whether it is desirable to have a system which would create a balanced Budget? That, I thought, was not a question for an Expert Committee. I should have thought there were some questions we could, as it were, dispose of now, and that that, for example, is one of them.

Sir Muhammad Shafi: I feel at present disposed to say "Yes."

Chairman: So do I; I rather feel disposed to say "Yes." What do you feel, Mr. Iyengar? Do you feel disposed to say "Yes" or "No" to that?

Mr. Iyengar: We agree it is better to agree straight away on anything you can.

Chairman: Never mind about generalities. We are on the question now of whether there should be no limit on the power to tax Salt and Opium and levy Customs.

Mr. Iyengar: There is no limit now.

Chairman: Then the answer is "Yes," you do agree. Then we are all, I think, agreed on that.

Mr. Joshi: Does the reply of Sir Muhammad Shafi mean that there should be no limit?

Chairman: Yes. Let us get on a little now, because we want to get on as quickly as we can. We have now decided these four things.

Mr. Gandhi: If it is to be said that they are decided, I think I ought to say a word.

Chairman: Do you think there ought to be a limit?

Mr. Gandhi: Not only that, but personally I should resist a tax on Salt altogether, and not merely limit it. I do not think I can say off-hand, moreover, that there should be no limit so far as Customs are concerned. There are many things on which I would say "No, I will not go beyond this." Similarly with Opium.

Chairman: What do you say with regard to Opium?

Mr. Gandhi: Opium I would have limitless.

Chairman: That is good. We are all agreed on Opium anyhow. Now, Mr. Gandhi, with regard to Customs, would you say there should be some limit there?

Mr. Gandhi: I think so.

Chairman: What limit is in your mind?

Mr. Gandhi: I would not take Customs in general; my judgment would vary, and I would not allow an expert to tell me what I should do, because it would be a matter of policy.

Chairman: That means giving the Federal Authority no limit, so that you agree with regard to Customs. We are all agreed on Opium, and we agree on Customs, because you say " I do not want any expert to tell me what I am to do," nor does the Federal Government. Now, with regard to Salt, I know that is rather a difficult question, but we want to get to the heart of the matter now. What do you think should be the position of the Federal Government so far as a tax on Salt is concerned. Do you think there ought to be no tax at all?

Mr. Gandhi: Not only no tax, but the tax which is to-day levied on Salt should go.

Lord Peel: Mr. Gandhi is expressing his individual opinion; but does he suggest that, in the Statute itself, the right to tax Salt by the Federal Government should be expressly excluded?

Mr. Gandhi: I do.

Chairman: Very well; we will make a note that Mr. Gandhi objects to any tax on Salt.

Lord Peel: It is more than that; it is more than a personal objection. He thinks Salt ought to be excluded.

Chairman: He thinks Salt ought to be excluded, yes. Now, Mr. Gandhi, would you help us with regard to this. First of all, can anybody say what the present tax on Salt brings in.

Mr. Gandhi: Six crores.

Sir Akbar Hydari: 6·7 crores, less 1·23.

Mr. Gandhi: I will give in to anybody who says between 6 and 7 crores.

Chairman: Very well, we will say 7.

Sir Akbar Hydari: The Government of India figure would make it about 5·50.

Chairman: Now, Mr. Gandhi, perhaps you will help us in this way. Suppose we were to say " Well, Mr. Gandhi is quite right; there ought not to be this tax," I should like to ask you where are we to get this five millions—taking it at five millions—from. Could you just help us with regard to that? What would you do?

Mr. Gandhi: My answer is that there should be a reduction to the extent of 6 crores from the Military expenditure.

Chairman: The way you want to do things is to reduce expenditure?

Mr. Gandhi: I do.

Chairman: Now, Sir Akbar, what other taxes do you think ought to be included?

Sir Akbar Hydari: There are two or three sources which have been indicated in the Report of the sub-Committee, and one or two were indicated in His Highness of Bhopal's speech; but before I can finally commit myself to them, I should like first of all to have before me the finally examined figures—I will not use the

word " expert," because it seems to be in a way unpalatable to certain people, and it seems to give rise to confusion as to whether these are experts in the rôle of arbitrators, or of explorers or of confirmers—therefore, I say, I should like to have before me the figures, from which I could see how much is required, or will be required, ordinarily to balance the budget, and what these sources are likely to produce.

Chairman: Have you any sort of idea, or guess, that you could give us?

Sir Akbar Hydari: As to figures, I have no idea. I am an absolute ignoramus with regard to that point. But with regard to the specific taxes, these have been mentioned, and they might be looked into as to what their statistical content would be. One is " Countervailing Excise duties on articles on which Customs duties are levied." (I want to emphasise the word " countervailing.") Then, No. 2 is " Federal taxes on Tobacco "—and what else was it, Your Highness?

H.H. The Nawab of Bhopal: We have not specified the subjects.

Sir Akbar Hydari: But they would have to be specified.

Chairman: Have you thought at all what would be the terms of reference to any committee?

Sir Akbar Hydari: With regard to this Committee, Lord Chancellor, I have analysed the functions, which, in different parts of it, the Report says need expert exploration. It seems to me that there are some enquiries which are absolutely necessary in order to give a definite shape to the schedule of taxes and heads of expenditure which you will have to bring into the constitution.

Chairman: Would you kindly give us one or two examples?

Sir Akbar Hydari: For instance, this very thing—we say that the future Federal Government of India will be responsible for a budget which has these heads of expenditure, reserved and non-voted: Military, Political, Frontier wars, Federal expenditure on pensions, non-voted. These are heads of expenditure. Then there will be unreserved heads, which can be voted upon. I have got the heads here. Then there will be something like this, that these will be met by sources of revenue—Customs, Salt, Opium, Federal Lines of Communication, Federal Currency, and so on. Then there would have to be some enquiry to show whether this will produce a balanced Budget in normal times. If not, then I should also be saying that perhaps the Federal Government should have also at its disposal the following sources of revenue: Excise on such and such articles, Federal monopolies, and such things. We should have to have an enquiry to show whether, although we may be mentioning all these things, there was still sufficient on both sides of the account to balance each other, but not sufficient to provide that margin of safety which is required in the ordinary fluctuations of world conditions on which all these depend. We must see whether it is so or not. If it is so, then, so far as the functions of

this Committee are concerned, they have confirmed the general and preliminary lines on which we have tried to allocate in paragraph 10, and the taxes to which we have preliminarily given a tentative assent.

Chairman: Might I just ask you this, because, of course, I have not been present at these enquiries. Is the sort of idea this, then—that this Expert Committee would be able to ascertain (1) the probable amount of receipts that the Federal Government would have at its disposal, and (2) the probable expenditure that the Federal Government would have to meet; and if, as a result of the comparison of the two figures, it was shown that in normal times there might be a deficiency of Y crores, then you would consider what powers the Federal Government must have in normal times over extra taxation so as to make up this probable Y crores deficiency. Is that it?

Sir Akbar Hydari: Extra taxes, N, O, P, Q.

Chairman: Yes, whatever they are. What you say, I suppose, is this. In those circumstances, the States would not be able to have a voice as to what powers they would place at the disposal of the Federal Government in respect of extra taxation or taxation for P, Q, R articles before they enter.

Sir Akbar Hydari: Yes.

Chairman: You have used in all your conversation, quite rightly, the word " normal." I quite agree with you; but some times, as we know to our cost, are abnormal. They are emergency times. Would you be disposed to say that, in times of emergency—I will not say for the moment how these are to be ascertained—the Federal Government should have enhanced powers, or how do you deal with a time of emergency?

Sir Akbar Hydari: The word " emergency " is a very elastic term. If it is an " emergency " of a kind that means an unbalanced Budget from year to year, then I would not call it an emergency. But if there was a war, then, of course, there ought to be a state of emergency; and that was contemplated by the particular paragraph in the Finance sub-Committee's Report. What they wanted there was to get an Expert Committee to say what should be the relative incidence of the burdens imposed on each of the federated Units. But, I think, in the first place, my reply would be that in time of war, in order to make the war a success, we should put forward all our resources, as this country did, and as we ourselves did, in the last war, without counting the cost. Secondly, if any taxes beyond that are required, they should follow the procedure which you will have to consider in regard to doing anything that has been laid down specifically in the constitution.

Chairman: Am I right in thinking that famine relief is a reserved Provincial subject?

Mr. Iyengar: It is a reserved Provincial subject.

Sir Akbar Hydari: It must be the care of each federating Unit to deal with famine.

I should like, if possible, that this Committee should find out the taxes in respect of which we can keep a wide margin, so that, for all practical purposes, even in cases of emergency, the call for the exercise of such powers would be exceedingly rare.

Chairman: What sort of personnel do you envisage for the Committee?

Sir Akbar Hydari: I should say those who are willing to serve on it of those who constitute the present Federal Finance sub-Committee, with the addition of a certain number of experts to help them in the collection of data and so on. The matter is really one to which I have not given very careful thought, but those are the lines along which my thought at present runs. If I may say so, the considered opinion of the experts may be necessary on such points as the yield of a certain tax, and so on.

Chairman: I should like to suggest this to you. I quite see, of course, the advantage of that; but I suppose that what you are in fact saying is this. You want a fact-finding committee—a committee to find the facts—and not a committee of politicians.

Sir Akbar Hydari: That is so.

Chairman: What you really want to do is this. You really want to find out the facts, and you do not want on a committee like that a gentleman who all his life has been a free-trader or a protectionist, or whatever it may be. You simply want a fact-finding committee.

Sir Akbar Hydari: Exactly.

Chairman: And you say that, when the facts are properly found, then those people who want to come in to the Federation, or the person who has the misfortune to be entrusted with the new Act, will be able, on the ascertained facts to say what the best way of dealing with them is?

Sir Akbar Hydari: Yes, this is my idea.

Chairman: Now, Sir Tej, would you help us on this? I see what the position is, and I am not expressing an opinion; but what do you say on all this?

Sir Tej Bahadur Sapru: So far as Your Lordship's first question is concerned, namely, whether there should be any limitation of the power to raise taxation in a certain manner or up to a certain point, I would not place any limitation on the power of the Legislature so long as you specify the subjects on which taxes should be levied. Of course, the raising or the lowering of taxation will be a matter of policy which will be determined from time to time by the future Executive Government, having regard to all the circumstances affecting the country internally and in its relations with other countries. But by the Statute I would prescribe no limit. That is my answer to the first question.

I believe the next question put by Your Lordship was with regard to this Expert Committee, its functions and its composition. I have myself been anxious, during the last three or four days, to find out what the terms of reference to this Committee are going to be. In the manner in which it has been suggested in the Report of Lord Peel's sub-Committee, it does not appear to me that that Expert Committee is one which I should favour. I am still unrepentant about it. If, however, what is really aimed at is that we should agree upon certain principles of taxation, upon certain principles of revenue, and then ask this Expert Committee to work out the details, I should favour it, so long as you do not further give this Expert Committee any power to lay down principles or to vary the principles which have been laid down by Lord Peel's sub-Committee.

Lord Peel: We did not intend to give them that. I am only speaking for my sub-Committee, of course.

Sir Tej Bahadur Sapru: I am quite prepared to accept that that was your intention, but I can only say that intention has not been expressed in that manner. I interpret that Report really to mean that you are leaving it to the Expert Committee to vary or modify or alter any principles which you have laid down. So far as the principles which you have laid down are concerned, I have not the least exception to take to any of them. I accept every one of the principles laid down by you. But if it is intended that this Expert Committee should vary or modify or alter those principles, then I am entitled to ask one or two questions.

Let us assume that the Expert Committee says that principle A will not work and that they recommend principle B. What is to happen when that Expert Committee has submitted its Report? Are we to be absolutely extinct? And, if so, who is going to decide whether the principle suggested by Lord Peel is going to be accepted, or whether the principle suggested by the Expert Committee is going to be accepted? It is possible to say "Well, that Expert Committee may submit a Report to His Majesty's Government." Very well. Is the Conference as a whole prepared to leave it in the hands of His Majesty's Government? That is really the question, to my mind. Or does the Conference reserve to itself the power of deciding whether it will accept or reject the recommendations of the Expert Committee? If the Conference is to reserve that power, that, to my mind, impiles that the Conference will continue to exist; and if the Conference is going to continue to exist, then you will have to answer the question, when and where is the Conference going to meet? Is it going to meet in Plenary Session, or delegate its powers to a small body?

Chairman: Which do you think?

Sir Tej Bahadur Sapru: Personally speaking, I say that we ought to arrive at certain agreements with regard to certain principles of taxation, making also provision for emergencies. If we agree to those principles, we have got to take our chance. Whether

the yield will be sufficient or whether the yield will not be sufficient is, to my mind, the question which we will have to face not only now but when the Federation has been established and after the Expert Committee has made a Report.

Supposing we establish the Expert Committee, and supposing we are also prepared to accept the recommendations of the Expert Committee, where is the guarantee that, after three years or five years acting upon those principles, we shall not have to face a deficit Budget? Even then we will have to adopt some means of balancing the Budget. We cannot afford to leave our Budget unbalanced. Therefore, the object which this Committee is intended to serve really does not seem to me to be quite so patent. It is rather a question of principle which is dividing us. If we agreed on the question of principle, then I think there could be no quarrel at all about the figures which would be worked out in accordance with those principles. You may have, if you like, in your constitution, special provisions to deal with a situation which may arise when there is a series of deficit Budgets. You may have very special clauses of that character. I will not object to them. But I do not think that this Expert Committee is going to be the sovereign cure for all the ills that may overtake us in future.

Lord Peel: It was never suggested that it should be that; otherwise it would be a miraculous committee.

Sir Tej Bahadur Sapru: If it is not going to give a sovereign remedy for all time to come, and for all contingencies, then I do not think it is going to serve any very great purpose. If it is a question of finding facts and of getting together information, I have no objection at all. But I do not think that that should be the pivot on which the existence or non-existence of the Federation should turn. That is the danger I have in view, My Lord.

As regards the composition, I am quite prepared to accept the claim which has been put forward—that the members of the sub-Committee are already experts.

Sir Akbar Hydari: I have been a member of the sub-Committee. We are not experts, not at all.

Sir Tej Bahadur Sapru: Then you will have a committee of experts plus a number of laymen. Well, I would not call that committee a committee of experts at all. I can take the old members in on the assumption that they are experts and multiply the forces of experts; but I will not have a committee consisting of laymen and experts, and then call that committee a committee of experts. That is all, My Lord, that I desire to say.

Sir Akbar Hydari: I might perhaps explain what I mean when I was speaking about that—and that is that that committee should be a committee of experts with regard to fact-finding, but, in case a situation arose, such as Sir Tej Bahadur Sapru himself mentioned, supposing this Committee thought that an alternative principle was necessary in order to balance the Budget, whose opinion should be before His Majesty's Government before they finally decided what

to put in the Bill—whether to put that alternative principle in the Bill or not. And I thought that perhaps, in view of the claim which has been put forward by Sir Tej Bahadur Sapru, it might be possible to obtain the opinions of these members who have been advising you now—to obtain their opinion as to what they had to say; but I myself will be content to leave the fact-finding committee's report to His Majesty's Government to put whatever provision they consider to be necessary, and have the whole thing discussed in the way in which other provisions will be discussed.

Chairman: Might I just ask you this, Sir Tej, because I can foresee a little difficulty that may arise. Agreeing generally with what has been said, supposing, then, we send this to a fact-finding committee, which I gather you do not think very highly of—you may be right on that; I am not saying you are not; at any rate, we will see that it does not take much time—and supposing that, as a result of the hard facts and the hard figures, when this report was sent to His Majesty's Government it was clear that one of the principles laid down by Lord Peel's Committee, was, through a misapprehension—and they have not had a very long time to do their work—such that, if His Majesty's Government adopted it and put it into the constitution (I am only asking you to accept an hypothesis), the result would be that the Federation would be bankrupt in twelve months? What is to happen then? Are we to stick to the principle and make you bankrupt; or are we to say, "We had better not do that; we had better be quite sure that, by adopting that, we do not adopt a principle which the facts now indicated show will lead us into real trouble"? I can envisage this—I am making no promises and I am making no pledges, but I can quite see that the man who is in charge of all these negotiations in future might very well write to you and write to other people and say, "Now, look here; as a result of the finding of the facts, we find that this principle won't wash." I suppose then that anybody would say at once, "Oh, well, that cannot be done." There is no reason why people should not be consulted. All I am envisaging is this: What is to happen—I do not think it likely to happen—supposing the facts show that the principle wants modifying? Would you then say, "I do not care twopence for the facts; there is the principle of Lord Peel's Committee; *coüte qui coüte, ruat coelum,*" and all that sort of thing? I think we ought to have some sort of idea for meeting a situation like that. I do not think it will arise, but is it wise to take a decision now which further investigation might show the awkwardness of acting upon?

Sir Tej Bahadur Sapru: Suppose a situation like that arises, one of two consequences must follow. Either the Federation will go by the board, and the Expert Committee will practically have finished the work, because it will be open for any of the federating Units to say "We will not enter the Federation under these circumstances"; or, if you are serious about the Federation, you will have to devise some machinery again for getting the opinion and the consent of the different Units. There is a third possibility.

You can say, "We, as His Majesty's Government, will make a decision later, not at this Conference"; but that will not be an agreed decision, it will be an imposed decision.

Chairman: Then I gather you do not want His Majesty's Government to impose any decision?

Sir Tej Bahadur Sapru: So long as it is possible for us to arrive at an agreement I will stand by that agreement.

Chairman: But if it is not possible, you still do not want His Majesty's Government to impose an agreement?

Sir Tej Bahadur Sapru: If it is not possible, then His Majesty's Government have to discharge their own functions and responsibility in the way they can best.

Chairman: Will Mr. Zafrullah Khan tell us what he thinks about the general question?

Mr. Zafrullah Khan: On the general question which has been last put by Your Lordship, if the Expert Committee came to the conclusion that, facing the hard facts and the hard figures, some of the principles laid down have to be modified, I suppose the situation would have to be faced again, and it would have to be seen whether those who desire to come into the Federation are willing to modify those principles.

Generally, with regard to the questions to be submitted to the Expert Committee, and as to how and in what stages the Expert Committee is to function, I agree with what is stated in the Report. I do not want to go over that again. It was only in regard to certain matters outside the Report that I wished to make some submissions.

Lord Peel: I only want to say two words on this matter. One is that I was rather pleased to find that really the differences of opinion even about the "Committee of Competent Persons" (if I may so term it, in order to use a more pleasant expression) are not so great as might be feared—even on this subject there seems to me to be a good deal less gap, shall I say, between the opinions which have been expressed before and those expressed to-day. I really do not think there is a very wide margin of difference.

I should like further to say—perhaps I ought to say to repeat, because I have partly said it before—that we have been, I think, rather misunderstood as a sub-Committee. Whether it is due to the form of words I do not know, but certainly our meaning has been slightly misunderstood. We did not in the least intend that this "Committee of Competent Persons" should set aside the principles at which we have arrived. What we felt was that there were many facts and figures which we had not got at the moment, and which could very easily be supplied either in India or here, and which, if they were got together in the proper form, would enable people to see exactly what was the effect of the principles which we laid down.

When the question arose about altering a principle, I did suggest a modification which was, I think, accepted generally by the sub-Committee. If we erred at all, we really erred on the side of too much caution; but we did feel that, if on a careful examination of one of these principles which we laid down it was found, from the facts and figures, that it would be very difficult to apply, we did not want to tie up these competent persons too much; and we thought they might make a suggestion which would get out of the difficulty on other lines. That was as far as we went. It would have been derogating, as it were, our own dignity, if we had suggested that we wanted to commit these matters to a " Committee of Competent Persons " who were going to play about with all the principles which were laid down. Nothing was further from our thoughts.

The suggestion I was going to make was this, Lord Chancellor. I do not know whether it will meet with your approval or with that of the members of the Committee. But, having reduced the difference to such minute proportions, would it be possible, do you think, that this matter should be adjourned say for twelve or twenty-four hours in order that you or others might bring forward a form of words—I do not like to see the word " formula " because it has been so much abused—which would really meet the difficulty? I really think it is a matter, not of substance, so much as of form; and I think it would be quite possible to find some form of words for reference to the Committee, or some limitation of the functions of that Committee, which I think might meet with the approval generally of all concerned. It does seem to me rather a pity, after this Committee has accepted the principles on which the Report was founded—in fact all its principles—that there should be any delay or any misunderstanding of any sort about such a comparatively minor matter as the exact way in which this " Committee of Competent Persons " is to carry out its duties. If it would meet with your view, might I suggest that this discussion should be adjourned until whatever time you think right—for twenty-four or forty-eight hours, whatever it may be—in order that a proposal might perhaps be put forward which would reconcile the different views.

Sir Tej Bahadur Sapru: I support Lord Peel's proposal for an adjournment.

Sir Akbar Hydari: I entirely agree with what Lord Peel has said. He has put much more clearly than I could have done what I had in my own mind.

Mr. Gandhi: Lord Peel, will you oblige us by undertaking to frame a concrete formula? If you do not, then it might be nobody's business, and we shall get nowhere; but if you would guide us by giving us a concrete formula which we might discuss, I would gladly welcome your suggestion.

Lord Peel: I think I can say that, whether through the Chairman or through some other member of the Government, the Govern-

ment would be prepared to put forward a proposal for the consideration of the Committee.

Mr. Jinnah: As I understand it, your proposal is only as to the terms of reference?

Lord Peel: I do not want to limit it exactly to the terms of reference, but as to what should be the actual operation and the scope of the work of this Committee. I put it in more general language. I do not want to limit it too closely.

Mr. Jinnah: It assumes that it must be referred to a Committee.

Sir Samuel Hoare: I should have preferred, myself, not to have made any definite assumption at the moment. I should have thought much the best plan was for Lord Peel, or whoever it may be, to have a talk with one or two representative people, after this meeting to-day, to see whether we could not put forward proposals that would meet with, anyhow, a general body of agreement in the Committee here. I would prefer to-day not to tie myself down too much to dotting the i's and crossing the t's. It may be we shall fail. If we do, it is without prejudice. We are not going to attempt to impose our view upon anybody who does not take it. It is open, when we meet again to-morrow, or whenever it is, for people to express their own individual views. But, I think, if we left it at the point which Lord Peel just suggested, there is a chance of getting agreement. I would not put it higher than that.

Sir Provash Chunder Mitter: I may say that I agree entirely with Lord Peel's suggestion; but, if I say one word to-day, my sole object is this. I have already suggested that you should not keep on a statutory basis Export duties, because 92 per cent. of them is paid by my Province and only 8 per cent. is paid by others. I should not keep them on a statutory basis; but I have no objection to the Committee investigating the question, whether the Committee be a fact-finding Committee or whatever the nature of the Committee be. I have already submitted a note to that effect; but it is necessary that any deficit should be met. I have subsequently put in a note showing, not only how the deficit can be met, but how certain other constitutional difficulties can be met. All I am asking for to-day is that the second note also should be submitted to the Committee. If they are accepted, both should go before the Committee.*

Head 8.

The Federal Court—(continued).

Sir Muhammad Shafi: Lord Chancellor, Some eight years ago, when occupying the position of Law Member in Lord Reading's Government, I recorded a memorandum advocating the early establishment of a Supreme Court in India. That memorandum was

* The discussion on Head 4 was concluded in the course of the 39th Meeting.

the outcome not only of my anticipations regarding coming events, but also of what I can best describe as judicial necessity—a phrase the meaning of which will become clear as I proceed further with my observations on the subject. At that time there was a school among our lawyer-politicians in India which preferred the unimpaired continuance of the jurisdiction which is at present exercised by Their Lordships of the Privy Council over our Indian Courts to the establishment of a Supreme Court in India. But such has been the rapid change in the political conditions and constitutional ideals in India during the post-war period that now, at this moment, there is practical unanimity among all schools of political thought in favour of the early establishment of a Supreme Court. And what has occurred in these historic halls since the commencement of the Round Table Conference has, I venture to submit, clinched the matter.

If I may say so, Yord Lordship, with that characteristic lucidity and precision which is all your own, has described the position in the first paragraph of the Memorandum which you circulated among the members a few days ago. There you have stated:—

> "In a constitution created by the federation of a number of separate political units and providing for the distribution of powers between a Central Legislature and Executive on one hand and the Legislatures and Executives of the Federal Units on the other, a Federal Court appears to be an essential element. Such a court is needed to interpret federal laws and compel obedience to them, and more particularly to interpret the Federal Constitution itself. The delimitation of the respective spheres of the Federal and the Provincial and State authorities, whether legislative or executive, will be most conveniently entrusted to a tribunal independent both of the Central, Provincial and State Governments, and it would in any event be required in order to prevent the mischief which might otherwise arise if the various High Courts and State Courts interpreted the Constitution in different senses, and thus made the law uncertain and ambiguous."

It is for these reasons, I presume, that a Supreme Court is an integral portion of the constitutions of all those countries which have adopted the federal system for purposes of government.

In these circumstances, it is not necessary for me to dwell further upon the *a priori* reasons for the establishment of a Supreme Court for India. What we have to concentrate our attention upon mainly is the range of jurisdiction which the Supreme Court is to possess. In determining this range of jurisdiction, I would not limit my horizon to the immediate requirements or even to what may be described as the near requirements of the case. I visualize the period when the proposed all-India Federation will have risen to its full stature—when the various constituent Units, as a result of the actual working of the new constitution, will have begun to

entertain the fullest confidence in the legislative, executive and judicial machinery of the Federation, and to regard it as their very own. It is true that, at present, the ruling Princes are somewhat nervous about the position that may be created as a result of the establishment of a Supreme Court in India having extensive jurisdiction over the whole of the Federation. I venture to think, however, that the time will come when, as a result of the actual working of the new constitution, the Princes will begin to have more confidence in this Supreme Court as the highest judicial tribunal in India. They will realise that, their prerogative of mercy being in no way affected by the existence of the Supreme Court, it is in the best interests not only of British India but of Indian India—of the country as a whole—that the Supreme Court should have jurisdiction, original and appellate, in regard not only to the constitutional matters which will be properly within its jurisdiction, but also to other matters, civil and criminal, to which I shall refer later on.

Now, what is the position which the Supreme Court occupies in other federal constitutions? According to section 1 of Article III of the Constitution of the United States of America, the judicial power of the United States is vested in one Supreme Court. Similarly, section 71 of the Australian Constitution lays it down that the judicial power of the Commonwealth shall be vested in a Federal Court, to be called the High Court of Australia. According to section 2 of Article III, the Supreme Court of the United States of America has both original and appellate jurisdiction, as has also the Australian Supreme Court under sections 73, 75 and 76 of the Australian Act. Similarly, the South African Supreme Court has both original and appellate jurisdiction, as specified in sections 96, 98, 103, 104 and 105 of the South African Act. In the United States of America, the jurisdiction of the Supreme Court extends, *inter alia*, to all cases in law and equity arising under the Constitution, the laws of the United States and other matters specified in section 2 of Article III. Articles 110 and 111 of the Swiss Constitution vest the Supreme Court of Switzerland with civil jurisdiction, and Article 112 with criminal jurisdiction, to the extent specified in those articles. Section 73 of the Australian Act confers a wide civil and criminal appellate jurisdiction on the Supreme Court of that Dominion. Similarly, section 104 of the South African Act invests the Supreme Court of the Union with civil and criminal appellate jurisdiction. I venture to think that these significant facts have to be borne in mind when deliberating on the nature of the jurisdiction which our own Supreme Court ought to possess, the principle being that, consistently with the conditions of India, the jurisdiction of our Court should, as far as possible, be analogous to that possessed by the Supreme Courts in other federal constitutions.

Having said so much, I propose to invite the attentoin of the Committee to one or two preliminary points before coming to grips

with the problem before us. The Lord Chancellor, in his Memorandum, paragraph 7, has observed as follows:—

> "The above suggestions contemplated a Federal Court exercising in general only an appellate jurisdiction in federal matters, both from the British-Indian Courts and from the corresponding State Courts. There are, however, a certain number of subjects with regard to which it would be necessary to consider whether the Federal Court should not also possess an original jurisdiction. Among the matters in which the Australian High Court has, or has been given by the Commonwealth Parliament, an original jurisdiction are those (1) arising under any Treaty; (2) affecting Consuls or other representatives of other countries; (3) in which the Commonwealth is a party; (4) between States, or between residents of different States, or between a State and a resident of another State; (5) in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth; (6) arising under admiralty or maritime jurisdiction; and (7) relating to the same subject-matter claimed under the laws of different States. These are not dissimilar to those matters which are within the exclusive jurisdiction of the Federal Courts of the United States; but, in Australia, the State Courts have a concurrent jurisdiction with regard to them, save in so far as the Commonwealth Parliament has excluded that jurisdiction by virtue of powers reserved to it by the Constitution. Whether or not it might be desirable to reserve an analogous power in the future to the Indian Federal Legislature, it seems clear that no good reason exists for depriving the British Indian Courts or the Courts of the States of original jurisdiction in any of the above matters (with perhaps one exception) when they arise in the federal sphere, subject always to the right of appeal to the Federal Court. The one exception which will require consideration is that of disputes in federal matters between the Federal Units themselves or between the Federation as a whole and one of the Federal Units."

With these observations contained in the Memorandum I find myself in entire agreement. I see no reason why jurisdiction over matters mentioned in this part of the Memorandum should rest exclusively in the Supreme Court, and why our Indian High Courts should be deprived of jurisdiction to deal with those matters.

The next point to which I wish to invite attention is that mentioned by the Lord Chancellor in his Memorandum, paragraph 6:—

> "On the assumption, then, that there will be only a single Federal Court with a jurisdiction confined to federal matters, the choice would lie between (1) giving the High Courts or other specified Courts, in British India, and the corresponding State Courts in the States, an original jurisdiction in all, or practically all, federal matters. . . . ."

I may here mention that His Lordship has defined federal matters in paragraph 9 of his Memorandum, and, as members of the Committee have all read the Memorandum, I need not refer to that paragraph—

> " federal matters with a direct or ultimate right of appeal to the Federal Court, and (2), following the Australian model giving the Federal Court an original jurisdiction in federal matters, with power, however, to the Federal Legislature, if it should later on think fit, to invest the British Indian courts and the corresponding State courts with a federal jurisdiction (with a right of appeal to the Federal Court), and to define the extent to which the jurisdiction so vested in any Court shall be exclusive of that which belongs to or is vested in those other Courts. On practical grounds the first alternative appears to be by far the more convenient, but it would seem necessary as a corollary to provide that all appeals in British India in federal matters shall go to the Federal Court . . ."

Here I would interpose just these words—" in the first instance." " instead of to the Privy Council, in order to obviate the difficulty which at one time arose in Australia when, on important issues, the Privy Council and the Australian High Courts gave conflicting judgments according as an appeal has gone to one or the other tribunal."

I find myself in complete agreement again with these observations, and venture to think that the first of these two alternatives is the one most suitable to be adopted in India.

Coming now to the question of the original jurisdiction of the Supreme Court, I would divide this head of discussion as follows: No. 1, what I would call ordinary original jurisdiction of the Supreme Court. This jurisdiction would cover the matters mentioned by the Lord Chancellor in paragraph 8 of his Memorandum. This is what His Lordship said:—

> " For disputes such as those mentioned above (*i.e.*, between Federation, State and Province *inter se*), neither existing British-Indian Courts nor State Courts would be an appropriate or indeed a possible tribunal. It can scarcely be doubted that such disputes will, from time to time, arise, and it seems necessary that they should be cognizable only in the Federal Court itself. Difficulties may well occur in this connection with the States, but should not be insuperable, at any rate so far as regards disputes between State and Province. More difficult problems, however, are likely to arise in relation to the decision of disputes between the Federation itself and one of the States."

Admitting the possibility of these difficulties, I venture to think that the matters mentioned by His Lordship in this paragraph of his Memorandum are such that jurisdiction in connection with them must obviously vest in the Supreme Court and in the Supreme Court

alone. Personally, I have no doubt whatever that a time will come and perhaps come fairly soon, when the Indian States themselves will prefer that questions arising between the Federal Government and themselves, or between State and State, should be decided by the Supreme Court rather than by the Foreign and Political Department of the Government of India. I have had some experience of the actual working of the existing system, for I was for two years, as Law Member, an *ex officio* member of the Standing Committee of the Chamber of Princes. Apart from that experience, my learned friend, Sir Tej Bahadur Sapru, will be able also to throw some light on this matter, for he and I were both Law Members for two years. During my term of office I remember only two cases which were referred to me as Law Member for opinion by the Foreign and Political Department.

Sir Tej Bahadur Sapru: Sir Muhammad Shafi was more fortunate than I. I was inundated with cases from that Department.

Sir Muhammad Shafi: If I may say so, I entirely agree with the observations made by the Lord Chancellor in this paragraph of the Memorandum. But I have one or two other observations to make in this connection. Presumably, suits covering these disputes will ordinarily be heard in the first instance by a single Judge of the Supreme Court. Provision should be made, in my opinion, for an appeal to a Division Bench of two or more Judges, as the Chief Justice may direct, against the decision of the single Judge, who originally decided the case. Further, appeals to the Privy Council with or without Certificate should be provided for, in my humble judgment, as this Committee may decide. Personally, I am of opinion that, should the Division Bench reverse or modify the judgment or decree, or order of the single Judge, appeal to the Privy Council should lie as of right. On the other hand, if the judgment, decree, or order of the single Judge is confirmed on appeal by the Division Bench, then further appeal to the Privy Council should be permissible where there is a Certificate.

Chairman: You are referring to cases in which there is a concurrent finding.

Sir Muhammad Shafi: Yes. Of course, the right of the Crown to grant a special leave for appeal will have to be preserved as at present.

The next species of jurisdiction which, I venture to submit, the Supreme Court ought to exercise has been described in legal literature as advisory jurisdiction. The Committee may be aware that Article 14 of the Covenant of the League of Nations after making provision for the establishment of the Permanent Court of International Justice at The Hague, and defining its general sphere of action, proceeds as follows:—

> "The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

Here, in England, under Section 4 of the Judicial Committee Act of 1833, His Majesty in Council may refer to the Privy Council for opinion any question of public importance. On the analogy of these provisions, and in view of the political conditions obtaining in India, I am of opinion that the Governor General ought to have power to make a reference to the Supreme Court on the lines of the English Act. Of course, whenever Governors in any Provinces in view of any questions that may arise within the limits of constituent Units, wish to have a question referred to the Supreme Court, they can move the Governor General, and through the Governor General, if he thinks fit, the question can be referred to the Supreme Court. But ought this power of reference to be limited to the Governor General alone? That is a question in connection with which, with Your Lordship's permission, I wish to make a few observations. Assuming that a measure has been introduced in a Legislature, Federal or Provincial, and objection is raised that the Bill, or any part thereof, infringes the provisions embodied in the constitution itself regarding fundamental rights, the President of the Council will, of course, have to give his ruling upon that objection. But assuming that he overrules the objection and the majority of the members representing the particular community affected by this alleged infringement of fundamental rights insist on the questions being referred to the Supreme Court, ought there not to be a provision in the constitution providing for such a case as this? I venture to submit that the constitution ought to provide for what is to happen upon the arising of such a contingency, for, if the question is settled on the advice of the Supreme Court there and then, the result will be that a great deal of trouble, not only to the people of India themselves, but to the Courts in India, will be avoided. Otherwise, if action is taken under such an enactment, it would be open to any member of the public to institute a suit in Court and to question the validity of the Act on the ground that it infringed the provisions of the constitution regarding fundamental rights; and the question would then have to be fought out.

Chairman: What you have said supposes the Act to have been passed, and you then say it would be open to any Federal subject to move the Court for a declaration that an Act is *ultra vires*—rather like our procedure under Order XIV. I did not quite follow, because my attention was distracted for a moment, but did you suggest that, when a Bill was proceeding to an Act, and before the Act was passed, there should be some right then for somebody . . .

Sir Muhammad Shafi: May I state the position again? What I said was that if, on the introduction of a Bill in any Legislature, objection is taken that the Bill, or any portion thereof, constitutes an infringement of the provisions embodied in the constitution regarding fundamental rights, then, if the President of the Council overrules the objection but a majority of the members representing the particular community affected by the Bill insist upon the question being referred to the Supreme Court, the President of the

Council should have the power to refer it for the opinion of that Court.

Sir Maneckjee Dadabhoy: And suspend the debate?

Sir Muhammad Shafi: Naturally. The debate meanwhile would be suspended.

Chairman: Mr. Gandhi asks whether it should be made compulsory on him to do it, or that he should only have the power to do it. Is it " may " or " shall "?

Sir Muhammad Shafi: If the majority of the members representing the community affected by such a law insist upon the reference, it should be compulsory on the President.

Chairman: Supposing the Bill is an omnibus Bill of, say, 12 parts, and that this *ultra vires* point only refers to something in the eleventh part of the omnibus Bill, you would only suspend the discussion upon that particular part? You would let the rest go on?

Sir Muhammad Shafi: Quite so.

Mr. Joshi: Is there going to be any time limit within which the validity of an Act passed by the Legislature can be challenged?

Sir Muhammad Shafi: Mr. Joshi has not understood me. When a Bill is introduced into the Legislature, no question of time limit arises. I would refer Mr. Joshi to the Indian Limitation Act.

Sir Provash Chunder Mitter: Six years?

Sir Muhammad Shafi: I think Mr. Joshi was referring to the stage when the Bill had become an Act.

Mr. Joshi: Yes.

Chairman: Supposing somebody, in the first year of the Act, happened to have a law-suit which depended upon a clause which he said was *ultra vires*; then he would be entitled to ask the Court to say that that clause was *ultra vires*. I quite understand that. But supposing the gentlemen in question did not have a law-suit until 15 years after the Act came into force . . . . .

Mr. Joshi: That is my point.

Chairman: . . . . . and then the 15th year came along, and he had a law-suit, and he said " I never had an opportunity before of saying what an *ultra vires* Act this is." What about that? Ought you to say " You ought to have had your law-suit long ago? "

Sir Muhammad Shafi: If I may venture to say so, with all respect, that question is entirely irrelevant to the submission I was making. My submission was that if, on the introduction of a Bill in a Legislature, such an objection were raised, in the circumstances described by me, it should be obligatory on the part of the President to make the reference. This particular question which you raise has nothing to do with that.

Chairman: I think what Mr. Joshi wanted to ask was this. When the Bill has become an Act—that is to say, if there has been no objection to it—it is open to anybody, to any subject, to ask

then for a declaration that that particular section is *ultra vires*. But I think what Mr. Joshi wants to know is this. It may be all right to say that nobody should be entitled to bring a suit for a declaratory judgment after six years, but would you shut out a person who finds himself, so to speak, upset ten years afterwards by the fact that an Act is *ultra vires*, or would you make a limitation then?

Sir Muhammad Shafi: If I may venture to say so, it is open to the Legislature to make a provision to meet such cases under the Indian Limitation Act, either by addition of an article or by modification of an article.

Chairman: Thank you. That answers you, Mr. Joshi.

Sir Tej Bahadur Sapru: In other words, I take the position to be that an Act which may be, upon the interpretation of the constitution, void, becomes perfectly valid by lapse of time.

Sir Muhammad Shafi: Quite.

Mr. Joshi: You will remember that the Trades Disputes Act was challenged many years after it was passed.

Chairman: Yes, I knew you were on that point.

Sir Muhammad Shafi: Coming now to the question of an appellate jurisdiction, that appeals should lie to the Supreme Court in all Federal matters, as defined by Your Lordship in paragraph 9 of your Memorandum, is indisputable, and I need not dwell upon that. It is obvious that the very reason for the existence of a Supreme Court, in so far as Federal matters are concerned, is that it should have exclusive jurisdiction in certain cases already mentioned, and final jurisdiction in other cases, regarding Federal matters. But the question arises whether the Supreme Court ought also to have civil or criminal jurisdiction in matters other than Federal; and it is here that I propose to describe what the actually existing position is with regard to both civil and criminal matters. Now, taking the question of civil appellate jurisdiction in non-Federal matters first, I have already shown that the Supreme Courts of the United States of America, Australia and South Africa are invested with civil appellate jurisdiction. There is no *a piori* reason why our Supreme Court should not possess such jurisdiction. But I go further, and I say that, in view of the existing position in India, it is what I characterised as a judicial necessity that our Supreme Court should possess civil appellate jurisdiction. Now, according to the existing law, which is embodied in sections 109 to 112 of the Civil Procedure Code, read together with Order XLV of the First Schedule to that Code, an appeal lies as of right to the Privy Council against a decree or final order in any suit of the value of Rs. 10,000 or upwards, or when the decree or final order involves directly or indirectly some claim or question to or respecting property of like amount or value and the High Court reverses or modifies the decree of the original court. In such a case, an appeal lies as of right to Their Lordships of the Privy Council. In other cases an appeal lies if the High Court certifies that a

substantial question of law is involved in the case. That is the position at present. Now, in order to prefer an appeal against the judgment, decree, or final order of the High Court in India to Their Lordships of the Privy Council sitting in London, six thousand miles away, what has the litigant to do? He has first to take certain steps in the High Court itself. Secondly, he has to pay for the printing of a new paper-book in the case. Thirdly, he has to instruct a solicitor, and through him one or more counsel, to argue his case before the Privy Council. Lastly, he cannot avail himself of the help of his own lawyer in India, who may have conducted his case from the day of its inception, unless he is a millionaire who can afford the expenses of the lawyer— his passage from India, his expenses in London, and so forth. These being the actual conditions, what is the result? The result is that, in the majority of cases—I might go as far as to say in the vast majority—decided by the High Court, there is actually no appeal brought to the Privy Council.

Chairman: Roughly speaking, taking an ordinary case in the Privy Council that lasts one day, and in which ordinary—not fashionable—counsel have been instructed, what is the cost of the appeal?

Sir Sultan Ahmed: Two hundred pounds would be a fair estimate for the day's costs.

Chairman: From the time you decide to appeal until the moment that your counsel gets up before the Privy Council and says, "I appear for the appellant," what is the cost?

Sir Tej Bahadur Sapru: Very much more.

Chairman: Mr. Gandhi tells me it is nearer £2,000.

Sir Sultan Ahmed: On the first day, when you ask for leave to appeal, the costs may be £150, and when the case comes on for hearing £200, thus making £350; and the solicitors' fees and other expenses would bring it up to £600.

Sir Muhammad Shafi: That is nearer the correct estimate.

Sir Tej Bahadur Sapru: It is anything from £400 to £600 at the very lowest.

Sir Muhammad Shafi: I forgot to mention that the litigant in India who wishes to prefer an appeal to Their Lordships of the Privy Council against the judgment of the High Court has also to make a cash deposit in the Treasury of a sum fixed by the rules framed by the various High Courts for the costs of his opponents.

Sir Tej Bahadur Sapru: Rs. 4,000.

Sir Muhammad Shafi: The result is that, to the ordinary Indian litigant, an appeal to Their Lordships of the Privy Council is almost prohibited by reason of the excessive cost. That is the existing position in India. I venture to submit that, for the transitional period, the Supreme Court in India ought to be invested with power to hear appeals in all cases of any value up to one lakh of rupees.

Cases of higher value should, during the transitional period, still continue to be heard by the Privy Council.

Sir Maneckjee Dadabhoy: Whether a question of law is involved or not?

Sir Muhammad Shafi: Yes.

(The Committee adjourned at 1-10 p.m. and resumed at 2-30 p.m.)

Sir Muhammad Shafi: Lord Chancellor, I hope that Your Lordship will pardon me if I go back just for a minute in order to remove a possible misapprehension. When I said that, during two years, only two cases from the Political Department were sent to me for an opinion, I did not refer to cases generally, but to cases the jurisdiction in connection with which we propose to give to the new Supreme Court—that is to say, disputes between the Government of India and the Indian States.

There is another aspect of the point which was under discussion when the Committee adjourned before lunch to which I wish to invite Your Lordship's attention. There have been conflicts of judgment on questions of law between the various Indian High Courts, and Courts subordinate to a particular High Court are bound to follow the rulings delivered by the High Court of their own Province, with the result that there is, here and there, with reference to questions of law, diversity in different Provinces. With the establishment of a Supreme Court in India, this state of things will vanish, and uniformity of laws will result. That is another ground in support of the early establishment of a Supreme Court in India and of vesting it with civil appellate jurisdiction.

I next come to the question whether the Supreme Court should be invested with criminal appellate jurisdiction or not. From certain references which I made to the constitutions of other countries towards the commencement of my speech, the Committee has seen that, in the United States of America, Switzerland, Australia and South Africa, the Supreme Court possesses criminal appellate jurisdiction. Moreover, it seems to me that here again judicial necessity in India requires that the proposed Supreme Court should be invested with criminal appellate jurisdiction. What is the existing position with regard to appeals in criminal cases under the present law in India? In all cases of conviction by Magistrates and Assistant Sessions Judges there is an appeal, in certain cases, to the District Magistrate, and in others, if the sentence awarded is for four years or under, to the Sessions Judge. The order of the Court, whether it be the District Magistrate or the Sessions Judge, is subject to revision by the High Court. The revisional powers of the High Court are very wide; indeed, those powers are limited only by the practice of the High Court itself. So far as the language of the Statute is concerned, there is no limit to those powers, except in one respect, with reference to which I shall have something to say later on. On the other hand, in convictions by the Sessions Judges, in all cases exclusively triable

by them, including cases of murder, involving sentence of death, and in all other cases where the sentence exceeds four years, the decision of the High Court on appeal is final. The Privy Council have over and over again pointed out that they are not a Court of Criminal Appeal, and have deprecated the presentation to them of such appeals. That is a position, I venture to submit, which is very incongruous. In the more serious cases, where the sentence awarded may even include the sentence of hanging, there is just the one appeal to the High Court, and the orders of the High Court are final; while, in ordinary cases triable by Magistrates in which the sentence awarded is four years or less, there is an appeal, and after that appeal there is remission to the High Court.

In this connection there is one point which is particularly noteworthy. According to the Criminal Procedure Code, the Local Government may make an appeal to the High Court against an order of acquittal. Cases have happened in India where, on appeal by the Local Government against an order of acquittal, the High Court have converted the acquittal into a conviction, and men have even been hanged in those circumstances, in spite of the fact that the Judge, who had the witnesses before him and had heard the whole of the evidence, had decided on acquittal, possibly in concurrence with the opinion of the Assessors—which opinion is not, however, always binding on the Judge. On an appeal to the High Court by the Local Government, the High Court have not only convicted the accused person, but sentenced him to death; and there is no remedy under the existing criminal law, except the submission of a petition for mercy to the Government. The order passed by the High Court on appeal in such cases is in its essentials not an appellate order, but an original order, and it is by that order that he is convicted and sentenced.

Chairman: In a case like that, does the High Court see the witnesses again or simply act on depositions?

Sir Muhammad Shafi: It merely hears the argument of counsel. For 39 years I have been practising in the Courts, often in cases of this kind, and I have known many cases in which an acquittal has been converted into a conviction, and transportation for life or capital punishment has followed.

Chairman: I suppose there is an appeal on fact as well as on law?

Sir Muhammad Shafi: Yes. I remember one case in which, not on an appeal by the Local Government, but on a petition for revision instituted by the relations of the man who was supposed to have been murdered, a Divisional Bench of the High Court at Lahore, consisting of a member of the Indian Civil Service and a gentleman promoted from the Provincial Service, actually set aside the order of acquittal and convicted the accused person and sentenced him to be hanged, in spite of the special provision in the Criminal Procedure Code that this cannot be done on revision. Section 439 (4) of the Criminal Procedure Code unequivocally and clearly lays down

that, on revision, the High Court cannot convert an order of acquittal into one of conviction; but, ignoring even this specific provision, in this particular case, the Court set aside the order of acquittal, convicted the man of murder and sentenced him to be hanged.

Chairman: Was attention drawn to that?

Sir Muhammad Shafi: A petition for mercy came up to the Viceroy, and of course this point was noticed, and ultimately Lord Reading ordered the man to be released; but in law the conviction still stands against him. I venture to submit, therefore, that to meet cases of this kind, and particularly murder cases, the Supreme Court should be invested with appellate criminal jurisdiction.

Sir Sultan Ahmed: Do you suggest that in all cases there should be a second appeal to the Supreme Court?

Sir Muhammad Shafi: Whether the appeal to the Supreme Court is to lie on both facts and law, or is to lie only on questions of law, is a different matter. What I am suggesting is that, in all cases where on appeal by Government an acquittal has been converted into a conviction, there should be an appeal of right to the Supreme Court. In other cases, and in murder cases in particular, there ought to be a possibility of further relief being obtained from the Supreme Court. Whether the jurisdiction of the Supreme Court in regard to these appeals should be limited to questions of law only, or whether they should have a right to interfere both on facts and law, is a different matter altogether.

I might mention in that connection that under the existing law, as I said, the power of revision exercised by High Courts against appellate judgments is unlimited, and there are various reported judgments of various High Courts that, in the exercise of that revisionary jurisdiction, High Courts are not limited to grounds of irregularity of procedure or illegality of conviction, but that they can go into the merits of the case in order to satisfy themselves that the man's conviction is correct. If, under the existing law, that is the position, namely, that the High Court can, in the exercise of its revisional jurisdiction, go into law and fact, I do not see any reason why, in murder cases in particular, the Supreme Court should not have that power. This is what I have to submit to the Committee in connection with the question of jurisdiction.

I now come to some of the other points which Your Lordship has mentioned both in the Memorandum, as well as in your speech the other day. Of course, provision should be made in the constitution to make the orders passed by the Supreme Court effective in the sense that they are carried out by the Governments, whether Central, Provincial, or otherwise. If a civil appellate and criminal appellate jurisdiction is given to the Supreme Court, orders passed in ordinary civil appeals and in criminal appeals should also be carried out.

Your Lordship's first question refers to the size of the Court. In my opinion, the Court, to begin with, should consist of a Chief Justice and five or seven Judges. I think a larger number of Judges to begin with is unnecessary, and that a smaller number would not meet the requirements.

The next question is with regard to the qualifications to be prescribed for the Judges.

Sir Sultan Ahmed: Sir Muhammad Shafi says that the Court should consist of a Chief Justice and five or seven Judges. He, of course, has taken into consideration his point that there should be a second appeal in criminal cases in which the death sentence has been passed, and also that cases of the value of below a lakh of rupees may come up to the Supreme Court? He has taken both those into consideration?

Sir Muhammad Shafi: I have. In regard to this question of qualification, I am emphatically of opinion that these qualifications should be limited to legal ability and experience, and should be irrespective of locality or anything else. The Crown ought to have the fullest discretion to select, for appointment as Judges of the Supreme Court, gentlemen who have the requisite experience and ability in law—the fullest discretion to select such persons—and there should be no limitation of any kind or sort.

Chairman: Not confined to practising lawyers?

Sir Muhammad Shafi: Oh, no, they may be Judges of the High Court, or they may be practising lawyers.

Mr. Sastri: Supposing a Judge of the High Court has never been a professional lawyer, would you exclude him?

Sir Muhammad Shafi: Personally I think that members of the Indian Civil Service are out of place in a Supreme Court.

Mr. Gavin Jones: But you would not disqualify them in any constitutional scheme?

Sir Muhammad Shafi: This is my own opinion. I say that they ought to be quite content with the existing position, which enables them to rise as high as a Judgeship of the High Court; I would not let them go any higher.

Mr. Sastri: But you mentioned only legal ability and experience as qualifications. You did not specify anything else.

Mr. Jinnah: He is now doing it.

Sir Muhammad Shafi: I am now adding it. Lord Chancellor, there is one thing further in this connection to which I wish to invite your attention. According to Article 20 of the Statute of the Permanent Court of International Justice, every member of the Court shall, before taking up his duties, make solemn declaration in open court that he will exercise his power impartially and conscientiously. In view of the conditions in India, I would incorporate in the Statute a provision similar to that contained in this Article 20 of the Statute in question.

Then the next question that you have been pleased to put to us is in connection with the removal from office of the Judge, and also the length of his tenure of office. Now, with regard to the removal of a Judge of the Supreme Court from his office, may I invite attention to the law in South Africa and Australia? According to Section 101 of the South African Act,

> "The Chief Justice of South Africa and other Judges of the Supreme Court of South Africa shall not be removed from office except by the Governor General in Council on an address from both Houses of Parliament in the same session praying for such removal on the ground of misbehaviour or incapacity."

According to Section 72, Sub-section (ii) of the Australian Act,

> "The Justices of the High Court and of the other Courts created by the Parliament . . . .
>
> (ii) Shall not be removed except by the Governor General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity."

The two enactments are almost word for word the same. According to Section 99 of the Canadian Act,

> "The Judges of the Superior Courts shall hold Office during good Behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons."

According to the Constitution of the United States of America, Article III, section 1,

> "The Judges, both of the Supreme and inferior courts, shall hold their offices during good behaviour"—

and that is all, without any further provision regarding an address from the American Legislature. Those are the provisions in the other constitutions.

Chairman: There is a very important addition in the American one, namely, "a compensation which shall not be diminished during their continuance of office."

Sir Muhammad Shafi: Yes, that is so. It seems to me that the question before this Committee is whether the Statute should embody merely a provision to the effect that the Judges of the Supreme Court shall hold office so long as they do not misbehave, or whether we should go further and hold that they be not removed from office without an address by the two Houses, that is to say, the Assembly and the Senate. Personally, I am inclined to the opinion that we should adopt the latter course. It is the course which is provided by the South African and the Australian Constitutions.

Dr. Ambedkar: Do you have to prove misbehaviour or incapacity?

Sir Muhammad Shafi: No, I should leave it to the two Houses.

As regards the place at which the Court should ordinarily hold its sittings, I am of opinion that it should sit at Delhi. Delhi is the proper place where the Court should be located. It is central, it is the seat of the Government of India, and I think the Supreme Court should properly sit in the Capital.

Then we come to the rule-making power of the Supreme Court. Your Lordship has suggested that this power should be given to the Chief Justice, subject to the approval of the Governor General, who should have power to regulate the procedure of the Federal Court, including the provision enabling the Court to sit in more places than one. I am in general agreement with that suggestion; but whether that power should vest in the Chief Justice, or in a Committee consisting of the Chief Justice and other Judges, is a matter for consideration.

Chairman: A rule Committee?

Sir Muhammad Shafi: A rule-framing Committee. That is a question for consideration. At present, as far as I am aware, there are rule-making Committees in almost all the High Courts, and the membership of those Committees is not confined to the Judges alone —leaders of the Bar also are appointed by the Judges.

Chairman: It is the same here.

Sir Muhammad Shafi: I think that is an excellent practice and one which, in my opinion, ought to be continued. I think I have now dealt with all the points in your note.

Chairman: I think the only one you have left out is the salaries of the Judges.

Sir Muhammad Shafi: And also the appointment of the staff. My own view is that the salaries of the Judges should be fixed by the Central Legislature but, once fixed, they should be non-votable. The amount should be fixed by the Legislature, but, once fixed, it should be non-voted. I do not wish to make any suggestion as to the amount. When I say it should be fixed by the Legislature, it is not for me to suggest anything.

With regard to the appointment of the staff, I think it is the South African Constitution which provides that the appointment of the staff shall rest in the hands of the Governor General. In other constitutions it is in the hands of the Chief Justice. I remember there is only one Act in which it rests with the Governor General. My own view is that the appointment of the staff should rest with the Chief Justice.

Sir Tej Bahadur Sapru: When, a few days ago, you intimated to the Committee that you proposed to take up the question of a Supreme Court, I ventured to ask Your Lordship whether you would confine the discussion merely to the Supreme Court or whether you would throw it open to the larger question of the judicature in India; and Your Lordship was pleased to observe that you would expect some of us to discuss the question in its larger aspect. Bearing that view of Your Lordship in mind, I shall make a few

general observations with regard to the judicial position as it exists at the present moment in India, and then pass on to the Supreme Court, its constitutional position in our constitution, its functions and its powers.

In various constitutions which have addressed themselves to the task of appointing a Supreme Court, you will find that provisions have been made, not only for the establishment of a Supreme Court, but also for the establishment of other inferior Courts. That is a position which you are not called upon to face in India. In India you have got already a hierarchy of Courts, beginning with the most junior Courts in the districts or the sub-districts and ending with the High Court at the top. The history of some of these Courts can be traced back to the time of Lord Cornwallis or even to the time of Warren Hastings; but, more or less, the position, so far as the judicial system in India is concerned, has remained the same as it was in the time of the East India Company—with this material difference, that in the year 1861 or 1860 the High Courts in India were established by an Act of Parliament and by Letters Patent issued by the Crown. Unfortunately we have got a multiplicity of Courts and a multiplicity of jurisdictions in India, not by any means less confusing than was the case in England until your Judicature Acts of 1873 were passed.

It is necessary for me to remind Your Lordship that, in India, we make a very clear distinction between revenue Courts and civil Courts. It would be wrong to suppose that the revenue Courts are not connected with the High Courts. The High Court does in many places exercise a very material jurisdiction in regard to certain matters over revenue Courts.

I will deal with the High Court first. The High Courts were established by Act of Parliament, and superseded two different kinds of Courts which existed at that time. One class of Court was known as the Supreme Courts, existing in the Presidency towns of Calcutta, Bombay and Madras. The others were known as the Sadar Diwani Adalats, which dealt with cases on appeal from the subordinate Courts, which came from the Provinces. The Supreme Court more or less followed the English practice. It had very much larger powers than the Sadar Diwani Adalats. In fact, as one early writer says, it was "The extended arm of the King's Bench Division in England." The Supreme Courts, the history of which can be traced back to the time of Warren Hastings, were composed exclusively of members of the English Bar recruited in England.

Chairman: Was that under the Regulating Act?

Sir Tej Bahadur Sapru: Yes. Members of the English Bar from England went out to occupy those judicial appointments. The Sadar Diwani Adalats were mostly composed of members of the Indian Civil Service or, before the Indian Civil Service came into existence, of a miscellaneous class of officers who acquired, somehow or other, some sort of judicial experience. In course of time

you found that, in the Sadar Diwani Adalats, there was, here and there, a sprinkling of professional lawyers in two or three places on two or three occasions; but mostly they were composed of Judges recruited from the Civil Service or from other Services. So far as the criminal administration of justice was concerned, it was in the hands of Sadar Fouzdari Adalats. When the High Courts were established, these two jurisdictions were amalgamated—the jurisdiction of the Sadar Fouzdari Adalats and the jurisdiction of the Supreme Court. The Supreme Court had jurisdiction restricted to the limits of the Presidency towns. At times, the Supreme Courts ventured to issue their writs outside their territorial limits; but that, of course, is a matter of controversy as to whether it was just or unjust, or allowed by law or not allowed by law. They tried to assume that jurisdiction.

Now, the Supreme Courts, generally speaking, had to deal with commercial cases in the Presidency towns where there was a large European population. Not only had they to deal with large commercial cases, but they had also to deal with cases relating to the personal laws of the Hindus and the Muhammadans arising within those limits. Naturally, therefore, they adopted the practice and the procedure of the English Courts; and you will find even to-day great differences in practice and procedure prevailing between the Presidency towns of Calcutta, Madras and Bombay, on the criminal side of the High Court, and what are known as the Mofussil Courts. Well, when the question came up before Parliament of establishing High Courts, they had to consider the question of the composition of the Judges, and then it was decided—and I will read out to Your Lordship the section of the Government of India Act presently —that a certain number of appointments on the Bench should be reserved for members of the English Bar, that a certain number of appointments should be reserved for members of the Indian Civil Service, and that the rest should go to anyone who was either a Judge or an advocate or a member of the Provincial Judicial Service. Well, on the face of it, it looks as if it was the worst kind of communal representation on the Benches that was adopted at that time, but there are reasons for that. In the year 1860 or 1861, when that Act was passed, there was no indigenous Bar of the size or of the talent or of the influence of that which has now grown up in India. The Civil Service, too, was not so strong, but it had exercised judicial functions for a considerable length of time even then. The Provincial Service was very raw and very immature, and had yet to win its spurs. Therefore, I should think, it was decided that there should be a division between the members of the English Bar and the members of the Indian Civil Service in the proportion laid down in the Act. I will just remind Your Lordship of Section 101 of the Government of India Act. It says that—

> " (2) Each High Court shall consist of a Chief Justice and as many other Judges as His Majesty may think fit to appoint,"—

and then clause (3) of Section 101 provides that—

> " A Judge of a High Court must be—
>
> (*a*) A barrister of England or Ireland or a member of the Faculty of Advocates in Scotland, of not less than 5 years' standing."

Notwithstanding the fact that Ireland has now become a Dominion or a Free State, it still continues to enjoy that privilege so far as the Indian High Courts are concerned. Sub-clause (*b*) says:—

> " a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a District Judge; or
>
> (*c*) a person having held judicial office, not inferior to that of a subordinate Judge or a Judge of a Small Cause Court, for a period of not less than five years; or
>
> (*d*) a person who has been a pleader of one of the High Courts . . . . for an aggregate period of not less than ten years."

So that is how our Judges of the High Courts are made up.

Then clause (4) of the same section provides for the qualifications of the Chief Justice, which has given rise to a considerable amount of controversy in recent years, and it is this:—

> " Provided that not less than one-third of the Judges of a High Court, including the Chief Justice but excluding additional Judges, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the Indian Civil Service."

If there is one institution established in British India by British rule of which men like me can legitimately be proud, it is certainly the High Court; and I desire to pay a tribute to the work done by the High Courts in the various Provinces of India during the last sixty or seventy years. Those are the institutions to which people look up for the protection of their lives, their property, their honour, and their freedom; and notwithstanding the disappointments at times, which must happen under the best conditions in any part of the world where there is civilised government, the fact remains that the High Courts generally come up to the expectation of the people in the discharge of their duties. But, while this is the general feeling with regard to the High Courts, I do not think I can on this occasion omit to refer to the very strong feeling which has been growing up in professional circles, and indeed among the public generally, for a number of recent years, that the time has come when Parliament or the newly-constituted authority, whatever it may be, should revise the Statute so far as the composition of the High Court is concerned. By prescribing that one-third of the members must be barristers and one-third of the members must be members of the Indian Civil Service, you sometimes—I have known it happen on more than

one occasion—deprive yourselves of the services of talented men outside those two charmed circles. I am the last man to say that the record of the Indian Civil Service on the bench has been one of dismal failure. On the contrary, I am free to admit that the Indian Civil Service has contributed in some cases to the Bench men whose work may well be compared with the highest examples—men like Mr. Justice Holloway of Madras, Mr. Justice Raymond West of Bombay, Sir Robert Aikman and Sir George Knox of Allahabad. These were men of whom we lawyers can legitimately be proud. But I will still maintain that the best part of the work in the Presidency Courts, and also outside, has been done, and the best traditions of judicial character have been introduced in our High Court, by men belonging to the Indian indigenous bar. Whatever justification there may have been some sixty or seventy years ago for a rule of this character, there is none left now; and I suggest that, when you come to revise the constitution, you should do away with this arbitrary division and lay down the law that the recruitment in the High Courts in the future shall be made either from the legal profession or from members of the Judicial Service. When I talk of members of the Judicial Service, I want to remind Your Lordship that, so far as the subordinate Judicial Service in most of the Provinces is concerned, it is recruited at the bottom from the legal profession itself. Of course, occasionally you have men of a miscellaneous character, but their race is fast disappearing. Some of them do still survive in the Province of my friend, Sir Muhammad Shafi; but I think the time is not distant when every member of the Judicial Service will be a man who at one time was a barrister-at-law or an advocate.

Sir Sultan Ahmed: The recruitment of sub-Judges in the Punjab now and for some years. . . . .

Sir Tej Bahadur Sapru: Yes, there has been a change recently, but there are still survivals of the old generation. It is no reproach to you. In my own Province, until twenty years ago, we had military officers serving as District and Sessions Judges.

Chairman: Can you tell me this, Sir Tej. I suppose Section 101 is a re-enactment of some previous Act?

Sir Tej Bahadur Sapru: It goes back to the year 1861.

Mr. Iyengar: The Indian High Courts Act.

Sir Tej Bahadur Sapru: Personally, I should be very glad indeed if, in future, the recruitment was confined exclusively to the legal profession; but I think it would be wrong and it would be unjust to deprive distinguished members of the Judicial Service, whether they are members of the Indian Civil Service or whether they are members of the Provincial Service, of their chance of promotion to the High Court. Indeed, I do think that men who come from the Provincial Judicial Service or from the Indian Civil Service, bring a certain amount of knowledge of customary law, of revenue administration and of other matters of that character which is very useful on the Bench. I would not, however,

prescribe any proportion; I would leave it to the Government of the future or to the Chief Justice of the future to choose what they or he will do when there is a vacancy. That is the least that I would expect to be done on this occasion.

Coming to the appointment of the Chief Justice, Section 101 (4) has formed the subject of a great deal of controversy in India as well as in England.

Sir Muhammad Shafi: I understand you are speaking of High Court Judges?

Sir Tej Bahadur Sapru: Yes, I am speaking of the High Courts; I have not yet come to the Supreme Court. It has been argued on one side that, on a proper construction of sub-section (4), the Chief Justice must be a member of the English Bar. On the other hand it has been argued—and I know that it has been maintained in the highest legal circles here—that, upon a strict interpretation of the Section, it is not necessary that the Chief Justice of the High Court must be a member of the English Bar, so long as the rule with regard to the proportion is satisfied. Well, that is the position, but I would say that, if men like the late Sir Romesh Chandra Mitter, Sir Promod Bannerjee, Sir Badruddin Tyabji and others could act as Chief Justice for periods varying from six to eighteen months without the judicial machinery getting out of gear, and without anybody having the slightest complaint against their work or against their independence or against their impartiality, then I see no reason why those very men should not have been appointed in the past as permanent Chief Justices. That is a reproach which the other branch of the profession cannot bear, and I do submit the time has come when we should do away with these vested interests. I therefore say that, so far as the appointment of the Chief Justice is concerned, it should be thrown open to members of the English Bar and to members of the Indian Bar alike.

Now, My Lord, in addition to that, I would point out to you that we have got a system in India of appointing additional Judges.

Mr. Zafrullah Khan: If the interpretation of sub-Section (4) which you seem to favour were correct, that would make eligible for the post of Chief Justice anybody who was eligible to become a Judge.

Sir Tej Bahadur Sapru: It is not my interpretation that I am giving; I may say it is the interpretation put upon it, to my knowledge, by some of the highest lawyers in London.

Mr. Zafrullah Khan: Do you think this interpretation is correct?

Sir Tej Bahadur Sapru: Personally, I stand by that opinion, and that was the interpretation of Sir Ashutosh Mukerjee, and has been endorsed, I know by one Attorney-General and one Solicitor-General.

Mr. Zafrullah Khan: I agree with you. That is my own interpretation; but that would bring in everyone who was *eligible to* become a Judge.

Sir Tej Bahadur Sapru: What has been held is, that the practical usage during the last sixty years has been uniformly one way, and therefore, in order to remove any possible doubt, what is necessary is that the Statute should be made quite clear.

Now, we have got a system of appointing additional Judges in the High Courts. I speak subject to correction by Your Lordship, but I do not think you have anything like that in England. You have Commissioners of Assize, but you have not got additional Judges. I have always been strongly opposed to these additional appointments. We must have a sufficient strength of Judges on the Bench to meet any unforeseen fatalities or retirements or cases of sickness. To my mind, these additional Judgeships have had a very demoralising effect on the Bar in India, and also on some of the Services. Therefore I say that we must do away with the provision with regard to additional Judgeships. I will only invite your attention to Section 106 of the Government of India Act:—

> "The several High Courts are Courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the Court, and power to make rules . . . . . ."

In point of fact, it is not this Section which lays down their jurisdiction definitely. Their jurisdiction is really laid down more definitely in the Letters Patent which have been issued to various Courts, and they have the jurisdiction which has been conferred on them by certain Acts of the Indian Legislature.

Coming to the question of jurisdiction, I will only remind Your Lordship that the jurisdiction which the Presidency High Courts exercise is far larger than the jurisdiction which the appellate High Courts in Allahabad, Patna and Lahore exercise. I see absolutely no reason why, merely because these Courts are appellate Courts, they should not exercise that jurisdiction which is exercised by the Presidency High Courts. For instance, no writ of *mandamus* or *habeas corpus* could be issued by any one of the appellate High Courts in Patna, Lahore or Allahabad. It is only during the last few years that, by an amendment of the Code of Criminal Procedure, the High Courts, under Section 491, can take certain proceedings in the nature of writs of *habeas corpus*; but these appellate High Courts have no power at all to issue writs of *mandamus* or various other writs. The question of endowing these High Courts with these powers was taken up some time ago by the Government of India; and I remember one learned Judge, who belonged to the Indian Civil Service, solemnly saying "If the appellate High Courts do exercise these powers, it will mean the end of British rule in India." I hope we shall approach the question of the jurisdiction of the High Courts now in a spirit of greater moderation and hopefulness than that displayed by that learned Judge.

I therefore say that you must strengthen the position and the powers of these High Courts. Frankly, I am very anxious that, so far as the High Courts are concerned, nothing should be done under the proposed constitution which might weaken their position. On the contrary I am very anxious that their position should be strengthened in every possible way.. These High Courts exercise an enormous jurisdiction over the subordinate Courts in regard to judicial matters. Sir Muhammad Shafi said that, in regard to criminal matters, the High Courts do exercise both appellate and revisional jurisdiction over the subordinate Courts. It is perfectly true that, under our law, the appeal lies both on facts and on law to the High Court; an appeal lies not only against sentences of conviction but also against orders of acquittal. I should leave the question as to whether an appeal should lie against orders of acquittal to the future Legislature; but, if it is intended that there should be a further appeal to the Supreme Court against criminal sentences passed by the High Courts, I should very much more closely define the limits within which those appeals would lie, and I would suggest that no such appeal should be allowed to the Supreme Court against the sentence passed by a High Court except upon a fiat or a certificate by the Advocate-General. For that reason I would suggest that the position and status of the Government Advocates in the different High Courts should also be raised to the status of the Advocate-General in the Presidency towns.

Now, Section 114 of the Government of India Act deals with the appointment and powers of the Advocate-General:—

> "(1) His Majesty may, by warrant under His Royal Sign Manual, appoint an Advocate-General for each of the Presidencies of Bengal, Madras and Bombay. (2) The Advocate-General for each of those Presidencies may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England."

You have got this power limited only to Bengal, Madras and Bombay; and I do suggest that there is no reason why, under the revised constitution, we should not have Advocates-General outside Bengal, Madras and Bombay, wherever there are High Courts, and that these Advocates-General should have the power to certify in certain cases that an appeal should lie to the Supreme Court, following more or less the same practice as is followed in the Presidency towns.

Mr. Jinnah: You know that the Advocate-General can only certify if there is a question of law; he cannot go into the facts.

Sir Tej Bahadur Sapru: That is what I am saying. I am not suggesting an unlimited right of appeal. I am only suggesting a limited right of appeal.

Mr. Jinnah: But in criminal cases the question of law is very seldom at issue.

Sir Tej Bahadur Sapru: I am not for an unlimited right of appeal to the Supreme Court, but only for a limited right of appeal

to the Supreme Court under certain conditions. Those conditions have got to be carefully defined. Otherwise, you will find that the Supreme Court will become a Court of Criminal appeal to the exclusion of all other work in India.

Mr. Jinnah: Yes; that is a different point; but I was only suggesting this, that if you only confine it to the certificate of the Advocate-General, then the certificate can only be issued on an error of law.

Sir Tej Bahadur Sapru: An error of law, yes, that is the phrase.

Now, My Lord, so much with regard to the High Court. I am not dealing with the question of the subordinate Courts, because most of these subordinate Courts have been established either by Acts of the Governor-General or by certain local Acts; and so far as their re-organisation is concerned—so far as reforms in the subordinate judiciary are concerned—that is a matter which should be left to the discretion of the future Federal Government or of the future Provincial Government.

I now come directly to the question of the Supreme Court. So far as the Supreme Court is concerned, in a Federal Constitution it exercises, as Your Lordship has pointed out in your note, and as will appear from any textbook on the subject, a very great function. It really acts as the balance wheel of the constitution, to use the words of a great American writer who, at another place, says that it is the final conscience of the constitution. In a federal constitution you must have some sort of machinery for deciding the question of the validity or invalidity of any legislation passed by the Federal Legislature or by the subordinate Legislatures. It is precisely in regard to that matter that the supreme Court exercises some of its best and greatest functions; and, so far as questions of interpretation of the constitution are concerned, there, too, the Supreme Court discharges functions of a most valuable character. I am not, therefore, going to argue any further the theoretical advantages of having the Supreme Court under a federal constitution. I think that is a point beyond all controversy, and I will address myself more to the composition of the Supreme Court and its functions and powers.

The Supreme Court which we have in view will discharge very great functions also in relation to the Indian States, and it is with regard to the Indian States that I should like to make a few observations. According to my humble reading of the constitution such as we have been discussing during the last year, the Supreme Court will not be a foreign Court so far as the Indian States are concerned; and I would beg Their Highnesses to remember that the Supreme Court will be as much a creation of theirs as of ours. By the delegation of certain elements of sovereignty to the Crown, the Crown will bring into existence a Supreme Court to determine questions of controversial character which may arise between Indian States on the one side and British India on the other side. Therefore these views will be submitted, not to an outside body, but to a

tribunal which is as much theirs as ours. For that reason I would appeal to Their Highnesses not to have any suspicion or distrust on the ground of their sovereignty as to the proper function of the Supreme Court or its proper character.

Having dealt with that question, I will now pass on to the functions of the Supreme Court. The functions of the Supreme Court may for convenience be divided into two parts. There are, first, those which relate to matters of a Federal character. For instance, if there is a dispute between one Indian State and another of a justiciable character, or if there is a dispute between an Indian State which is a member of the Federation and, say, any Province, or if there is a dispute between one Province and another of a justiciable character, all these matters have to go to the Supreme Court. Similarly, any question as to the interpretation of the constitution must also go to the Supreme Court.

The question therefore arises: how will these questions go before the Supreme Court? Will they go to the Court on its original side or on its appellate side? Most of the disputes which directly arise between different Units of the Federation—whether one Unit be a British Indian Unit and the other a Unit belonging to the Indian States or not—will have to be disposed of by the Supreme Court on its original side. But it is quite conceivable that certain issues, raising questions relating to the constitution or the interpretation of federal law, may arise in the course of private litigation, either in British India or in the Indian States.

Chairman: We have trouble ourselves on this point.

Sir Tej Bahadur Sapru: If such a case should arise, what are we to do? Frankly, it would be nothing short of a misfortune if you had a situation in which every Court in British India and every Court in the Indian States should give a decision on the interpretation of the constitution or on a matter of a Federal character. Already our case law is a wilderness, and I think one consequence of allowing freedom to every single Court to deal with questions of that character will be to invite a most confusing conflict of judicial authority. Well, in point of fact, at the present moment, as the law stands, it is open to any Court in British India to discuss the validity of any Act of the Indian Legislature. Their Lordships of the Privy Council have recognised expressly that power of the Indian Courts; but when the new constitution comes into existence, questions of such great difficulty under the constitution are bound to arise that I shudder to think what the consequences may be if Munsiff A and Subordinate Judge B and Magistrate C take it upon themselves to deliver judgments interpreting the constitution or disposing of those Federal issues. I therefore suggest that, whenever a question of that character arises in the course of private litigation—that is to say, litigation to which private persons are parties—or in the course of litigation to which one of the parties is a private person and the other is a State, a case should be stated by that Court for

the opinion of the Federal Court; and, when the opinion of the Federal Court has come back to the original Court which was seized of the case, that Court should give its final decision following the view of the Supreme Court or Federal Court.

Chairman: Let us assume, for the sake of argument, that the Federal Legislature passes a Sale of Goods Act, and a question arises in private litigation between two people, we will say in Bombay, on this Sale of Goods Act, and it involves, as you have just been putting so very clearly, some constitutional points. Is the judge in such a case of his own motion to say " This involves a constitutional point, and I shall at once state a case for the opinion of the Federal Court? Is that to be it?

Sir Tej Bahadur Sapru: That is my point. I should like to mention that what I am suggesting is not by any means unknown elsewhere.

Chairman: We have the same problem at this moment in England. What about the costs? Is not it rather hard on those private persons?

Sir Tej Bahadur Sapru: That, I submit, is inevitable. So far as the costs are concerned, they will have to be determined having regard to all the merits of the case—who was the person who initiated that litigation, who was the person who was refusing the right of the plaintiff, and so on. All these questions will have to be taken into consideration by the Judge before he awards costs. May I illustrate that from what happens at the present time in India? Your Lordship will remember that, a few minutes ago, I referred to the revenue Courts which exist in India, and which exercise a very special jurisdiction in several Provinces. Now, the revenue Courts generally deal with questions of revenue between the State and the landlord, or with questions relating to rent between landlord and tenant. If, in any litigation arising in a revenue Court, a question of title is raised, the law provides that that Court will stay its proceedings to state a case on that particular point to the neighbouring Civil Court and get its decision, and finally pass its judgment in accordance with the decision on that particular point. That happens every day in several of the Provinces with which I am acquainted. What I suggest is some similar procedure in this connection.

Sir Sultan Ahmed: In the case to which you refer, the word used is, " may," not " shall." They may decide the point summarily or they may refer the matter to the Civil Court for decision.

Sir Tej Bahadur Sapru: Under certain Acts it is also " shall."

Sir Provash Chunder Mitter: In Bengal it is " may."

Sir Tej Bahadur Sapru: Yes, in Bengal, but I am speaking of land legislation in the United Provinces. That has been found to be very convenient, and it has led to the avoidance of a great deal of unnecessary litigation and waste of time in India—I do suggest that in the interests of uniformity of authority, it is a procedure

which, at any rate, might be investigated and examined, and if you find it satisfactory then you should incorporate it there.

Sir Muhammad Shafi: May I ask a question on this point? There are altogether 11 Provinces in India and, roughly speaking, there are on an average 25 districts in each Province; so that altogether there are not less than 300 districts in India. In each district there are five or six Courts, so that there are over 1,000 Courts in India. If, in a whole year, each Court sends up to the Supreme Court even only one reference, there will be 1,000 references from different parts of India.

Sir Tej Bahadur Sapru: I am not frightened by what Sir Muhammad Shafi has just said.

Mr. Jinnah: I would like to understand one point so that I may give attention to it. Your Lordship gave the example to Sir Tej of the Sale of Goods Act, and you said "Supposing some constitutional question arises: what is to happen?" I want to know what you mean by "constitutional question."

Chairman: I mean a question involving a point which is a constitutional point under any Act of the Federal Government.

Mr. Jinnah: We will assume that the Sale of Goods Act is a Federal Act. What is the constitutional question which you are imagining?

Chairman: I am not thinking of any particular constitutional question, because it is impossible to imagine. I cannot envisage what would arise. All I am saying is, supposing a constitutional question arises.

Mr. Jinnah: I should like to know what is in your mind.

Chairman: The Loch Foyle case.

Mr. Jinnah: That will go to the root of the Act?

Chairman: Yes.

Mr. Jinnah: If it is only a question of the construction or interpretation of the application . . . .

Chairman: No trouble.

Mr. Jinnah: It is only when a question is raised which goes to the very root of the matter—of the very Statute—that the point arises as to what is to happen?

Chairman: Yes.

Mr. Jinnah: Yes. That is really what I had in view—the question of the validity or invalidity of the Act.

Sir Tej Bahadur Sapru: But assuming that this suggestion of mine is not accepted, then I would suggest that an appeal should lie to the Federal Court from all decisions, whether they are passed by British Indian Courts or by the Courts of Indian States, wherever there is a question of a Federal character involved or a question of the interpretation of a Federal law involved.

Chairman: Well, that is more like America, is it not?

Sir Tej Bahadur Sapru: And I do not think that Their Highnesses can reasonably take exception to that on the ground that they are submitting to the jurisdiction of a foreign Court. Therefore I make my suggestion in the alternative—either an appeal on a question of a constitutional character under the Federal law to lie to the Supreme Court in its Federal jurisdiction, or the practice which I have suggested of stating a case for the opinion of the Supreme Court.

Before I go to the question of the relations of the Supreme Court to the High Courts in India, I would like to dispose of one or two other connected matters. The Supreme Court, as Your Lordship will remember I said a few days ago, will exercise very great powers in regard to certain safeguards which may be provided for the minorities, and I would welcome arming the Supreme Court with some special powers, or with powers which belong to Supreme Courts generally, in regard to such matters. Sir Muhammad Shafi, in the course of his speech, suggested that, if a Bill is in progress in any Legislature, and any number of persons belonging to a particular community take exception to that Bill on the ground that it infringes some fundamental principle, that matter should forthwith be referred to the Supreme Court.

Sir Muhammad Shafi: Not forthwith; for instance, if the President announced that there was no case.

Sir Tej Bahadur Sapru: I mean, before the Bill was passed into law. Well, I personally think that that would block all legislation, and that it is apt to be abused by parties, particularly when political passions will be strong in regard to any particular legislation; and I would suggest that, instead of the proceedings of the Legislature being stayed by an injunction—and I should like to avoid government by injunction—that legislation should be proceeded with. At the end of that legislation, if any particular interests are involved or are prejudiced or are affected, I should permit those interests to seek their remedy in the ordinary Courts; but I should not hold up the legislation merely by an injunction during the proceedings of the Legislature. Frankly, I do not wish an unpleasant situation to arise at that time between a Court of law and the Indian Legislature.

Then, again, Your Lordship was pleased to put a further question, and that was whether we contemplated providing a period of limitation during which an Act passed by the Federal Legislature might be challenged in the Federal Court. I think that was the question raised by Mr. Joshi. Well, the Indian Limitation Act has got nothing to do at the present moment with any case in which the validity of any Act under the present constitution can be challenged. An Act of the Indian Legislature may have been passed 25 years ago or 30 years ago, and yet, if the question of its validity directly or indirectly arises now, the validity of that Act can be challenged. I do not think it would be right for us to

prescribe a time limit within which the validity of an Act may be challenged, because it is, to my mind, not right that, before a cause of action has arisen we should deprive the man of the remedy. Therefore, I would leave the question of the validity or the invalidity of the Act to be challenged at any time whenever it may be necessary to raise it.

(The Committee adjourned at 4-5 p.m.)

PROCEEDINGS OF THE THIRTY-EIGHTH MEETING OF THE FEDERAL STRUCTURE COMMITTE, HELD ON THE 21ST OCTOBER, 1931, AT 12 NOON.

HEAD 8.

The Federal Court—(continued).

Sir Tej Bahadur Sapru: My Lord, There remain very few points for me to deal with now, and I shall deal with them as briefly as I possibly can.

We all contemplate that the Supreme Court or the Federal Court will have original jurisdiction as well as appellate jurisdiction; but, so far as the original jurisdiction is concerned, we cannot overlook the fact that we must make provision at some time for appeal from Judges sitting on the original side. I suggest that we should provide, following the practice that prevails in the Indian High Court under the Letters Patent issued by the Crown, for an appeal to Division Benches from the decision of single Judges exercising an original side jurisdiction. Technically speaking, they are known in India as Letters Patent appeals; that is to say, if a Judge sitting on the original side of the Federal Court disposes of a matter, then a Division Bench consisting of two or more of the Judges of the same Court may hear an appeal from that decision.

The next question which will arise will be as to whether we shall provide for an appeal from the decisions of the Supreme Court to Their Lordships of the Privy Council here in regard to federal and constitutional matters. I do not wish in the slightest degree to infringe or encroach upon the prerogative of the Crown, which exists in all the Dominions, notwithstanding some attempt which has been made in recent times, or rather during the last two or three years, to question that prerogative in Ireland; but I would suggest that, so far as the decisions of the Supreme Court in regard to constitutional and federal matters are concerned, they should be final and treated as conclusive. I do not know what exactly will be the view which will be put forward by Their Highnesses. Personally speaking, I am open to conviction on this question. I do not know whether they contemplate that appeals from decisions of the Supreme Court may under certain circumstances and under certain conditions, lie to Their Lordships of the Privy Council. But, speaking for myself, I should be quite content if the prerogative of the Crown remains there, and with it we invest the decision

of the Supreme Court with finality in regard to these federal matters.

I will pass now to another class of jurisdiction which Your Lordship indicated in your Note—I mean the advisory jurisdiction. Following the practice of the Judicial Committee Act, I understand the suggestion is that it should be open to the Governor-General to make a reference to the Supreme Court in regard to any matter of a justiciable character or in regard to any matter involving the interpretation of the constitution, for the opinion of the Judges of the Supreme Court. I would welcome such a jurisdiction. Indeed, you might follow the precedent of some of the Dominions and give the Governor-General the power to take the opinion of the Supreme Court as to whether a particular measure, which has been passed by the Legislature, is or is not inconsistent with any fundamental principle, before he gives his assent to the Bill in question. That is a matter for consideration. Personally, I think that, if you gave that power to the Governor-General, it would save a great deal of unnecessary litigation at the instance of a private party, either at the earlier stage during the progress of the Bill, as suggested by Sir Muhammad Shafi, or at a later stage, as suggested by me, after the Bill had been passed by the Legislature.

Chairman: I should like to draw your attention to a difficulty which has been felt in the Privy Council, and which you will find reported in the case of *The Attorney-General of British Columbia* versus *the Attorney-General of Canada* (1914, Appeal Cases, page 162). It was a judgment given by Lord Haldane in a case in which the Governor-General had asked certain questions of the Court which the Court found it extremely difficult to answer, and he said this:—

> " The business of the Supreme Court of Canada is to do what is laid down as its duty by the Dominion Parliament, and the duty of the Judicial Committee, although not bound by any Canadian Statute, is to give to it, as a Court of Review, such assistance as is within its power; nevertheless "—

and this is the point to which I was referring under that Act of 1833—

> " under this procedure questions may be put of a kind which it is impossible to answer satisfactorily. Not only may the position of future litigants be prejudiced by the Court laying down principles in an abstract form without any reference or relation to actual facts, but it may turn out to be practically impossible to define the principle adequately and safely without previous ascertainment of the exact facts to which it is to be applied. It has therefore happened that in cases of the present class "—

that is, the class we are now discussing—

> " Their Lordships have occasionally found themselves unable to answer all the questions put to them, and have found it advisable to limit and guard their replies."

The reason I draw your attention to that is because it falls to my lot to give judgment in the Privy Council to-morrow on that very question, and I know how difficult it is. I think it is a very good jurisdiction—I agree with you there—but I would point out to you that it is a very difficult one when you have to answer questions in the abstract.

Sir Tej Bahadur Sapru: I may say that I am fully aware of the difficulty; and perhaps you will bear me out, My Lord, when I say that, in the entire English legal history, Judges have always revolted against being called on to advise on abstract questions of law, because it is very embarrassing to them to decide abstract questions of law independently of concrete facts. Nevertheless, while that has been the course of legal history in England, and while that is undoubtedly the English judicial sentiment, we feel that such jurisdiction has been given in the Dominions, and I may say that even in India, under certain Acts and regulations, Governments have got the power to make references to the High Court for obtaining their opinion on questions of law. I have known that actually being done under certain regulations and under certain Acts. Of course, I realise the inconvenience of it, and I do not wish to overlook that aspect; but having regard to the very, very important questions which the Governor-General will have to answer himself, it is far better that he should have the satisfaction of having obtained the opinion of independent Judges than that he should depend upon the advice either of his secretaries or even of his law advisers.

As Your Lordship was pleased to refer to the Judicial Committee Act of 1833, I would only remind you that some very important questions have, in recent years, come up before the Judicial Committee under that Act. I know of one case in which a dispute arose between the Government of India and the Chief Justice of a certain High Court with regard to a certain appointment, and that had to be referred to the Privy Council.

I will say no more now, My Lord, on the Federal side of the jurisdiction of the Supreme Court. I will pass on now to the non-Federal side of the jurisdiction of the Supreme Court.

I entirely endorse the remarks made by Sir Muhammad Shafi that there has been a very strong feeling growing in India, quite apart from the Federal constitution, that we should have a Supreme Court in order to set at rest at times great conflicts of opinion that exist in so many Courts as exist in India, and also to make it easier for the poorer litigant to have the right of appeal which he cannot afford to exercise when he has to come across to England. I therefore think that we should invest the Supreme Court also with the character of an appeal court, exercising appellate power over ordinary litigation in the various High Courts of British India; but, while I agree to that extent with Sir Muhammad Shafi, I am not prepared to endorse the remark of Sir Muhammad Shafi that this appellate jurisdiction of the Supreme Court should be limited

to matters of the value of one lakh of rupees. My own view is that I should allow appeals from the various High Courts to the Supreme Court upon the same conditions as now obtain in regard to appeals from the High Courts to the Privy Council.

Mr. Zafrullah Khan: If you will excuse me, I believe what Sir Muhammad Shafi said was that any suits up to the value of one lakh —beginning with Rs. 10,000, I suppose—should go to the Supreme Court.

Sir Tej Bahadur Sapru: I do not agree with that.

Mr. Zafrullah Khan: I thought you were saying that the minimum value should be one lakh.

Sir Tej Bahadur Sapru: No. I say that, just as at the present moment appeals lie directly to the Privy Council from the High Courts under Sections 109 and 110 of the Code of Civil Procedure, so appeals should lie from the High Courts to the Supreme Court on a certificate given by the High Court. For instance, if there are concurrent judgments of the High Court and of a subordinate Court, and the case does not involve any substantial question of law, there shall be no appeal to the Supreme Court, the judgment of the High Court being final. If there are concurrent judgments, but still the case involves a substantial question of law, the High Court may qualify that by saying that, in their opinion, the appeal is a proper and fit one to go before the Supreme Court. If the judgments of the two Courts—that is to say, the High Court and the subordinate Court—are not concurrent, then the appeal shall lie to the Supreme Court as a matter of right.

Mr. Jinnah: And if the High Court does not give a certificate?

Sir Tej Bahadur Sapru: Then you should make a motion to the Supreme Court for special leave, just as is the practice in the Privy Council. When an appeal has been heard by the Supreme Court and a litigant desires further to take the appeal to the Privy Council, I should impose certain conditions. Frankly, I should not allow an appeal to go to Their Lordships of the Privy Council on any trifling or trivial point. If the case is one which involves a really substantial question of law affecting a large section of the community, or it affects a very large property, then I should allow the Supreme Court to give a certificate that the matter may be taken up before Their Lordships of the Privy Council. I always assume that the Prerogative of the Crown will remain unaffected.

Now, My Lord, there remain two or three minor questions. One of the questions raised was whether the power of making appointments in the Supreme Court should remain with the Chief Justice or with the Government of India. I would venture to say that, in the interests of the Court itself, I should give that power to the Chief Justice of the Supreme Court. What really happens in actual practice in the various High Courts at the present moment is that, although the power belongs by law to the Chief Justice, the Chief Justice appoints a Committee of Judges, which is technically

known in India as the English Committee, to be distinguished from the Rule-making Committee."

Sir Provash Chunder Mitter: If I may interrupt for a moment—in the last 15 years that practice has been departed from in Bengal.

Sir Tej Bahadur Sapru: It still prevails in parts; I know it prevails in Patna and in Madras.

Sir Provash Chunder Mitter: And that was the practice in Bengal.

Sir Tej Bahadur Sapru: So that, in actual practice, a Chief Justice, who may have many other important things to attend to, will seek the advice of his colleagues in regard to these important matters; but I should by law leave that power with the Chief Justice, leaving it to him to devise any means that he thinks proper for carrying out his function in that behalf.

Then there will be one question which I will just ask you to consider. I am aware that on that particular point there may be room for difference of opinion. I put it very tentatively. I am referring to it because I feel there is a feeling even among the Judges in India, in view of this constitution which is now under consideration. That question is whether, so far as the High Courts are concerned, they will have direct relations with the Central Government or the Federal Government, or whether they will continue to have their relations with the Local Government. As the matter stands at present, the Calcutta High Court is the only High Court which has direct relations with the Government of India. The Government of India are called upon from time to time to make appointments of Judges there; or, rather, to make recommendations about the appointment of Judges there—that would be a more correct way of putting it. In the case of the other High Courts, their relations are directly with the Local Governments. I am aware that there is a feeling among Judges that, in the future constitution, the Judges of the High Court should be placed in an absolutely independent position and should not be liable to local pressure in any shape or form. It is for that reason I suggest—though I will not be dogmatic about it—that, so far as the High Courts in British India are concerned, they should be brought into direct relation with the Central Government or the Federal Government.

Mr. Jinnah: What do you mean by pressure?

Sir Tej Bahadur Sapru: Pressure has been exercised. If you ask some Judges of the High Court, they will tell you that. Pressure can be exercised by questions in the local Council with regard to appointments, with regard to staff, with regard to expenditure and so on, and debates on such subjects have taken place, unfortunately, during the last two or three years, in certain Legislative Councils. As a matter of fact, I know that Judges, both European and Indian, have resented that sort of interference with their internal autonomy, and it is for that reason that I have expression to that view.

Mr. Jinnah: Do you think the Centre will be free from the pressure?

Sir Tej Bahadur Sapru: Very much more. Local prejudices and local passions are far more injurious to the independence of the judiciary than a discussion which may take place once in ten years at the Centre.

Now, My Lord, I come to the last point, namely the question of the appointment of the Judges of the Supreme Court. I am frankly very anxious that the Supreme Court which you are going to create shall be a Court which will command the respect and the confidence of the public and of the profession, and that appointments to the Bench of the Supreme Court should be made absolutely on the principle of merit, character and integrity. I would not allow racial or political considerations to come in in any way so far as these appointments are concerned. Well, how is that end to be achieved? That is the question which we have got to face. In Australia and in South Africa the power is vested in the Governor-General in Council. In Canada the power is vested merely in the Governor-General as representing the Crown. In actual practice, as the constitution has developed in Canada, I gather the Governor-General now consults his constitutional advisers; but still the Statute vests that power in the Governor-General as representing the Crown. Having regard to the position in India, and bearing in mind that our constitution will in course of time develop, I would rather follow the Canadian model and give the power to the Governor-General, as representing the Crown, to appoint the Judges both of the High Courts and of the Supreme Court in future. That is my suggestion. With regard to the tenure of office of Judges of the High Court, the position is that, under the Government of India Act, Judges of the High Court hold their office during the pleasure of the Crown; and I know that there is a feeling in judicial circles in India that the tenure of office of the Judges of the High Court in British India should be exactly the same as the tenure of Judges in England, namely, that they should hold their office during good behaviour. With regard to the procedure to be adopted for the removal of a Judge, I would recommend the same procedure as obtains in England—the procedure of an Address by Parliament, subject to certain conditions and limitations.

Mr. Sastri: The High Court or the Supreme Court?

Sir Tej Bahadur Sapru: The High Court and the Supreme Court, both.

Mr. Jinnah: Do you mean as to the appointment also?

Sir Tej Bahadur Sapru: I was speaking as regards the removal.

Mr. Jinnah: But what about the appointment of the High Court Judges?

Sir Tej Bahadur Sapru: The Governor-General.

Sir Akbar Hydari: An Address of which Parliament—an Address of the Federal Parliament?

Sir Tej Bahadur Sapru: Upon an Address by the Federal Parliament. Luckily for ourselves, during the last sixty or seventy years of the existence of the High Court, there have been no such motions made; and I do not think that we need be very much afraid that in future any such motions will be made. It must be said, to the credit of the High Court Judges in India generally, that they have given no reason for a motion of that sort being made, and I do not anticipate that things will be worse in future than they have been in the past.

Mr. Jinnah: We have no power to deal with that.

Sir Tej Bahadur Sapru: There is nothing to prevent you.

Mr. Jinnah: We cannot do it.

Sir Tej Bahadur Sapru: I know that, in one instance in very recent years, certain questions were put with regard to a certain Judge.

Mr. Jinnah: You cannot move a vote.

Sir Tej Bahadur Sapru: I am talking of the future constitution.

Mr. Jinnah: I ask your pardon for interrupting you. You said something with regard to a Provincial Government not having anything to do with the High Courts. Was it with regard to the staff? I did not quite catch that.

Sir Tej Bahadur Sapru: With regard to the appointments, staff and everything.

Mr. Jinnah: Not the Judges?

Sir Tej Bahadur Sapru: Not the Judges. What happens at the present moment is that, if there is any appointment to be made, or if there is budgetary provision to be made for certain expenses which the High Courts have got to incur—I am speaking of places outside Calcutta—the Chief Justice of the High Court puts himself in touch with the Local Government, and then is the occasion for exercising some sort of pressure in the local Legislative Council or otherwise. I do not wish the High Courts to have dealings with the Provincial Councils in regard to those matters.

Mr. Jinnah: The internal administration of the High Court should be responsible to the Centre and not to the Local Governments?

Sir Tej Bahadur Sapru: That is so. You will have to come to some understanding with the Local Governments on that point.

Sir Provash Chunder Mitter: For ten years, or something of that sort?

Sir Tej Bahadur Sapru: Yes.

Sir Akbar Hydari: Would that be an item of expenditure on the Central Budget?

Sir Tej Bahadur Sapru: No, no. That is really what is happening in Bengal and has happened in Bengal. The Local Government finds the funds, but in other matters the High Court deals directly with the Government of India.

Dr. Ambedkar : But the Simon Commission recommended quite the other way. .

Sir Tej Bahadur Sapru : I am not following the Simon Commission.

Dr. Ambedkar : They recommended that both should be Central.

Mr. Jinnah : It really comes to this, that although the Local Government finds funds for the internal administration of the High Courts, they must be under the control of and responsible to the Central Government?

Sir Tej Bahadur Sapru : Yes.

Mr. Zafrullah Khan : As regards funds, you mean that the High Court should send an order to the Central Government?

Sir Tej Bahadur Sapru : That will have to be worked out.

Now, My Lord, I come to the last question—the question of the salary of the Judges. Here I am speaking with many apologies to Mr. Gandhi. If you really mean to have a good Supreme Court, then—I will speak in the bluntest possible manner—you must make it worth the while of good lawyers, lawyers of good repute and large experience, to go on the Supreme Court. If you really conceive that you are going to have really good Judges on Rs. 500 a month or Rs. 1,000 a month, or Rs. 1,500 a month, let me tell you frankly that I would much rather go without a Supreme Court at all. You may like it or you may not like it; but the fact remains that, in India at the present moment, you cannot get really first-class lawyers to accept Judgeships of the High Courts, the position in the last ten or fifteen years has so radically changed. For one thing, political careers have opened which were not open to Indian lawyers ten or fifteen years ago. For another thing, whether you like it or whether you do not like it, the scale of fees in the High Court has gone up so high that you can no longer tempt a first-class man to a Judgeship of the High Court, which it was possible for you to do fifteen years ago. I will not mention any particular figure lest I give a shock to some people here. But I do hope that, when the question of the appointment and the salary of Judges is taken into consideration, we will not proceed in an over-cautious manner in this matter. I do not want the Legislature to be over-generous; but we must bear in mind the realities of the situation. I certainly want Judges of the Supreme Court to be a contented lot. When you remember that it is not merely the learning, ability and experience that you have got to pay for among your Judges, but, what is more character, integrity, independence, then I do not think it is a wise policy to have the services of cheap men, because, whatever be the patriotic appeal that you may make, the fact remains that you will have to make it worth the while of distinguished and eminent laywers to become Judges. I have looked into the figures of the salaries of the Judges of various Courts; there is no fixed standard in the Dominions—the

salaries vary from Dominion to Dominion. But you have got to bear in mind, in fixing the salaries, the present position in India. I will not be explicit at the moment; I will leave it to the Federal Legislature of the future to come to a decision on that point. I will only repeat this warning, that it is no use having cheap Judges.

My Lord, I believe I have covered practically all the ground that I intended to cover, and I have nothing more to say.

Sir Sultan Ahmed : My Lord Chancellor, We have listened to two very interesting and instructive speeches on the question of the Federal Court. Both Sir Muhammad Shafi and Sir Tej Bahadur Sapru have made very helpful general observations. I feel, therefore, that in following them it is not necessary for me to dwell at any length on the general aspect of the question; but, as I go on formulating my views on the points that you have raised, I shall be able to indicate how far I agree with their views, and if I do not agree with them, I will formulate my reasons for doing so.

My Lord, the very first question—that is the necessity of a Supreme Court, or call it by any name you like—is the easiest question of all the questions that you have formulated. Once we decide to have a Federal Constitution, a Federal Court is a necessary corollary. It would be a waste of the time of the Committee to give any reasons for the establishment of such a Court; the main questions which will engage the attention of the Committee will be its jurisdiction and its constitution.

I will now proceed to deal with these points in detail. As regards the constitution of the Court—by which I mean the number of Judges required, the qualifications of the Judges and salaries and pensions—much will depend upon what we envisage as the jurisdiction of this Court; but as I will deal with the question of jurisdiction at the end, I will now indicate my views on the question of constitution.

I am strongly of opinion that the Federal Court should be manned by professional lawyers alone. It is well known, My Lord, that in India there is a very strong feeling at the present moment, that the High Courts should in future be manned by professional lawyers alone. The necessity for having members of the Indian Civil Service, which existed for a long time, does not seem to exist now. I am in full agreement with the views expressed by Sir Tej Bahadur Sapru as to his admiration for this distinguished Service. It is the finest Service in the world, and even on the judicial side the work of the members of this Service has been, on the whole, extraordinarily good; but it is, in my submission, an anachronism to have people as Judges of the Supreme Court who are not trained lawyers—men who begin their life by performing executive functions and ultimately, after some years' start, deciding questions of an intricate nature involving questions of civil law, which at times are exceedingly difficult. I would therefore suggest that, when our Federal Court is established, we must man it by professional lawyers; and in this connection, My Lord, I would

refer you to the Report of the Services Committee, paragraph 2, page 65, where they say:—

> "We recommend that for the Indian Civil and Indian Police Services recruitment should continue to be carried out on an all-India basis, but the majority of the Committee are of opinion that recruitment for Judicial Offices should no longer be made in the Indian Civil Service."

If that be so—and there is no reason why that view should not be accepted—for the High Courts, I should think the reasons must be still greater for having only professionally trained lawyers for the Federal Court.

Sir Tej Bahadur Sapru : With regard to the Federal Court, if you will allow me to intervene, I should like to say that I am definitely of the same opinion as Sir Sultan Ahmed. It was only with regard to the High Court that I made that exception.

Sir Sultan Ahmed : I am at present dealing with the Federal Court alone. I would, however, have this qualification, namely, that the Judges must be advocates of at least ten years' standing. This will ensure experience, maturity, and also ability.

Sir Tej Bahadur Sapru : I should make it twenty.

Sir Sultan Ahmed : I will make it ten.

Mr. Jinnah : I think a man with ten years' experience may be better than a man with twenty-five years' experience.

Sir Sultan Ahmed : In my opinion, ten years would mean really that he would be thirty-one years of age; and I do not agree with the view which has been expressed in certain quarters that no Judge of the Federal Court should be over thirty!

Sir Sultan Ahmed : As regards the appointment, considering that it is going to be a Federal Court, it is absolutely essential that there should be full confidence in our Judges, both on the part of the people in general and also on the part of the different Units of the Federation—that is, the Provinces and the Indian States; and, in view of that, I would vest the power of appointment in the Crown, that power to be exercised through the Governor-General alone, and not through the Federal Government at all.

As regards the salaries and pensions to be fixed for them, it is difficult to answer that question at present. But I want to have a compromise between the views expressed by Sir Tej Bahadur Sapru and those expressed by Mr. Gandhi; and I would say this, that whatever the pay may be, it should not be in any way less than the pay of the Chief Justice of any High Court in India, except the Calcutta High Court. If the pay of the Chief Justices in the High Courts is Rs. 5,000, I suggest that the pay of a Judge of the Supreme Court ought to be Rs. 5,000—it ought not to be less. There is, however, one Court in India where the salary of the Chief Justice is Rs. 6,000. I am not going to that extent, considering that India is a poor country; but I am in full agreement with my friend, Sir Tej Bahadur Sapru, that it will be of no use think-

ing of a good Federal Court with good, experienced, competent lawyers sitting in that Court on Rs. 500. If you can get good men at Rs. 500 for the High Courts, by all means have them also for the Federal Court. As far as I can see, however, it will probably not be in our lifetime, but it may be at some time in the future when things will change so considerably that—

Mr. Zafrullah Khan : When a rupee will become worth Rs. 10!

Sir Sultan Ahmed : On the question of principle, that will be my answer. The actual figure may be settled later on; but, in principle, it should not be less than the pay of the Chief Justice of any High Court.

Chairman : I rather forgot one thing. What about pensions—after what time?

Sir Sultan Ahmed: After the age of sixty. That is the present rule, and I would continue it.

Mr. Zafrullah Khan : You can earn a full pension by 12 years' service in the High Court.

Sir Tej Bahadur Sapru : 11½ years, I believe, is the rule for the Chief Justice and 12 years or 12½ years for the junior Judges.

Sir Sultan Ahmed: I would maintain the present position.

Sir Tej Bahadur Sapru : That is for a full pension. There are proportionate pensions.

Sir Sultan Ahmed: As to the place of the Federal Court, I agree with my friend, Sir Muhammad Shafi, that it should be at Delhi. But it will be open to the Chief Justice, in consultation with the Governor-General, to have the venue somewhere else also, either on circuit or during certain parts of the year. That is a matter which will have to be settled in consultation with the Governor-General.

Sir Purshotamdas Thakurdas : It might go to Simla.

Sir Sultan Ahmed: I cannot say that at present.

Mr. Jinnah : Would you fix any age limit for the Judges of the Supreme Court?

Sir Tej Bahadur Sapru: Sixty-five, roughly speaking.

Mr. Zafrullah Khan : As compulsory age of retirement?

Sir Tej Bahadur Sapru: Yes, retirement not before 65. Our 60 years' rule has worked rather disadvantageously in India, though I have known Judges as old as 75 or 76 sitting in India.

Mr. Zafrullah Khan : How did the Bar like that?

Sir Tej Bahadur Sapru: The Bar liked it very well.

(The Committee adjourned at 1-30 p.m., and resumed at 2-30 p.m.)

Sir Sultan Ahmed: There are only two other points with which I wish to deal before I go to the question of jurisdiction, namely, as regards the number of the Judges, and in what circumstances they could be removed, and how.

As regards the number, as I submitted to Your Lordship and to the Committee previously, much will depend on what we propose to bring before the Federal Court. If it is going to be simply a Federal Court in the strictest sense of the term, the number of Judges may not be large; but if as has been suggested by Sir Muhammad Shafi, this Court is to have wider powers than the ordinary Federal Court, then in that case I am afraid the number will be very much larger. I will deal with this point a little later, after I have dealt with the question of jurisdiction.

So far as removal is concerned, I agree with Sir Tej Bahadur Sapru and Sir Muhammad Shafi that that should be done on an Address by the two Houses of the Federal Legislature.

Now, My Lord, as regards jurisdiction, which is really the most important part of the matter which we are discussing, it is obvious that the Federal Court must have, to begin with, original jurisdiction to settle disputes between the Federation and the States, between the Federal Government and the Provinces, between States and Provinces, and also with respect to disputes between State and State. In matters relating to the constitution, I would provide an appeal to the Federal Court itself, as has been provided for in appeals from original findings in the High Courts which exercise original jurisdiction, such as Calcutta, Bombay and Madras. A case decided by a Judge sitting on the original side can be taken on appeal to a Divisional Bench of the same High Court, and there is a further right of appeal to the Privy Council. In the constitution that we are proposing, I submit that it is desirable to provide an appeal from the decision of the Judge sitting on the original side of this Court to this same Court. Ordinarily, the number of Judges sitting on the appellate side of the Court, to hear appeals from original decisions of the same Court, is three, but that is a matter of detail. After that I would provide an appeal as a matter of right to the Privy Council in questions regarding the constitution only.

In all other maters of a Federal nature, a description of which Your Lordship has given in paragraph 9 of your Note, I agree that there should be an appeal to the Federal Court from the different High Courts, and the High Courts should have the jurisdiction which has been assigned to them in other constitutions. There is no reason why the jurisdiction of the High Court in such matters should be taken away—a jurisdiction which exists at present in other constitutions. In such cases, an appeal would lie to the Federal Court. I would not give an appeal to the Privy Council as a matter of right. It would be subject to the leave of the Federal Court; but, if this leave is refused, special leave might of course be granted by the Privy Council, and that right of the Privy Council should be preserved.

Then, My Lord, the question of an advisory jurisdiction has also been suggested by Your Lordship in your Note, similar to what we find under the Act of 1833 so far as the Privy Council is concerned. It may be very useful at times to have the advice of the Federal

Court, but I submit that it will be exceedingly embarrassing to the Federal Court, and at times their advice may work to the prejudice of the parties concerned. The Governor-General has, and ought to have, Law Officers of the Crown able and competent enough to give him the advice that he may seek; and I would respectfully suggest that the Court should not be called upon to express any opinion on matters which may be brought to it later on by a party when that party may have a cause of action. The materials before the Court for advice naturally may be one-sided, and it seems to me highly undesirable that the Court should be put in a position where the opinion ultimately may not be as satisfactory as one would expect from a Court of this kind.

Chairman: Are you suggesting, then, on the advisory jurisdiction, that any question should go direct to the Privy Council and not first to the Federal Court?

Sir Sultan Ahmed: No, My Lord; I submit that there should be no advice given by any Court.

Chairman: May I just say this with regard to that. You were saying that it was rather one-sided. I quite appreciate that criticism, and I have no doubt that it is a perfectly true criticism in some cases; but in other cases it is not one-sided, for this reason. For instance, we have several times, in the last year or two, had cases in the Privy Council from Canada; and then what happens is this, that usually this advisory jurisdiction is resorted to in cases where there is a conflict of opinion between the Province and the Dominion; and then what happens is that the questions are stated by the Governor-General, and they are debated before the Privy Council, and the Attorney-General for Canada will appear on one side, and the Attorney-General for the Province which opposes it upon the other. Thus, it is not quite one-sided in that class of case although I quite appreciate your criticism that there may be some cases where it is one-sided.

Sir Sultan Ahmed: In such cases, there will be no question of prejudice, and the Court will have full materials.

Chairman: Sometimes, indeed, we have the pleasure of seeing many Attorney-Generals, because we have the Attorney-General for Canada on one side, and the Attorney-General for Quebec, the Attorney-General for Ontario and all the other Attorneys-General. Still, I quite appreciate your point.

Sir Sultan Ahmed: In some cases it will act to the prejudice of the parties.

Chairman: Yes, I quite follow.

Sir Sultan Ahmed: In the cases mentioned by you, of course, there will be no prejudice.

Now, as regards the question of a Bill which has been introduced in the Federal Council which may violate the fundamental rights of any community or any section of the people, it was suggested by my friend, Sir Muhammad Shafi, that there should be a power in

the President of the Assembly or the Federal Legislature to refer the objection which may be raised by any section of the House to the Federal Court for advice. Of course, from the view that I have submitted on the question of the advisory jurisdiction in cases where even the Governor-General may want advice, it follows that I cannot favour any reference by the President of the Federal Legislature for advice. But, apart from that, there may be cases where valid objection is taken to the conduct of a Bill in the House. In my submission, provision should be made for that, but not in the way that has been suggested. In fact, if Your Lordship will refer to paragraphs 16 and 22 of the previous Report of the Federal Structure sub-Committee, Your Lordship will find suitable powers given to the Governor-General:—

> "16. *Governor-General's special powers.*—With regard to subjects in the administration of which the Governor-General would normally act on the advice of his Ministers, it was generally agreed that arrangements must be made whereby in the last resort the peace and tranquillity of any part of the country must be secured, serious prejudice to the interests of any section of the population must be avoided, and members of the Public Services must be secured in any rights guaranteed to them by the constitution."

That is the first safeguard here. Then, will Your Lordship turn to paragraph 22?—

> "22. *Bills affecting religion and commercial discrimination.*—The question whether Bills relating to such matters as the religion or religious rites and usages of any class of the community should require the Governor-General's previous sanction to introduction will require consideration, as will also the question of discrimination between different sections of the community in matters of trade and commerce. There was general agreement that in these matters the principle of equality of treatment ought to be established, and various methods were suggested for the purpose. The sub-Committee content themselves, however, with saying that it is one which should be further examined and discussed in consultation with the various interests concerned."

I would respectfully submit that, if there is a Bill which has been brought forward by any member in the House, which is objected to on the grounds mentioned in paragraph 22 by any section of the people in the House, there should be a reference to the Governor-General; and it will be open to the Governor-General to obstruct the further passage of the Bill, if he is satisfied that the rights of any particular community will be prejudiced. But, if the Bill is passed into an Act, I submit that that will be open to challenge when a cause of action arises—it may be after one year, it may be after two years, it may be after fifty years. But if the legislation which has been enacted by the Federal Legislature violates any fundamental rights, and is void on that ground, that will

remain void for ever—it makes no difference what the period is. There are two courses open in such cases. Either a representative suit may be brought by a number of people, challenging the validity of the Act which has been passed—but that can only be by a representative suit; or a suit may be brought by a person who may be affected by this invalid law which has been passed. I submit, therefore, that while the Bill is under discussion, or before the Bill has been introduced, there should be ample powers given to the Governor-General to satisfy himself that the Bill does not contravene any of the fundamental rights. No more than that is necessary. But after the Bill has been passed into an Act, I submit that the procedure which I have suggested might be adopted in suitable cases.

Chairman: Are you envisaging, then, as one of the clauses of the constitution, a clause setting out and defining fundamental rights?

Sir Sultan Ahmed: Yes. That is essential in my submission.

Now, My Lord, I go to the question of the jurisdiction of the Supreme Court as an appellate Court from the different High Courts or other final Courts in India, like the Chief Court of Lucknow. I entirely agree with my friends, Sir Muhammad Shafi and Sir Tej Bahadur Sapru, that it is time that a Supreme Court was established in India to hear appeals from the High Courts and the chief Courts in India. Sir Muhammad Shafi has explained fully the necessity of the establishment of such a Court. He has pointed out the burden which is thrown upon litigants in bringing their cases to the Privy Council here. But it is not so much the question of cost which presses me in asking for the establishment of the Supreme Court as an appellate Court from the High Courts in India. There are other more serious considerations why, I submit, the time has come when this question should be decided in favour of the establishment of a Supreme Court as an appellate Court. In most cases we have points which cannot be explained properly either to the solicitors or to counsel appearing, without personal explanation either by someone who has conducted the case in the lower tribunal or by someone who is familiar with the facts of the case. Those who have to practise in India realise and appreciate the value of such instructions; and I am sure I shall be borne out by my other friends when I say that cases have been lost here in the Privy Council because counsel and the solicitors were not well posted with respect to the facts. Big briefs are sent here, and counsel do their level best to master the facts stated therein; but there are here and there passages which may be exceedingly useful and to which their attention is not fully drawn. I respectfully submit that it is highly desirable that full instruction should be given in such cases, particularly when these appeals which come to the Privy Council are appeals both on facts and on law. Your Lordship is aware that the Board here usually sits with one or two members, or sometimes more, with experience of High Court work in India. That shows the necessity for Indian experience

on the Bench. That necessity being established, it would be to the greatest advantage if we had those very people in India to help the other members who may be requiring the assistance of experienced brother Judges. I therefore submit that, on all grounds, it is necessary that this Court should be given full powers to hear appeals against the decisions of the Courts in India in which the law has provided appeals to the Privy Council. My friend, Sir Muhammad Shafi, would, however, limit the right of appeal to the Federal Court or Supreme Court in India to cases of the maximum value of one lakh of rupees. Speaking for myself, I do not see why that limitation should be imposed. Either there should be no appeal to the Supreme Court from the High Courts, and the present state of affairs should continue or if there is going to be a replacement of the Privy Council by vesting the power of hearing appeals from the High Courts in the Supreme Court in India, then there should be no limitation at all. I do not see why there should be any difference.

My learned friend, however, has also suggested that this Supreme Court should have the right to hear criminal appeals. He was very much overwhelmed by the fact that, though ordinary cases come up to the High Court for revision, cases in which, for instance, the death sentence has been passed, cannot be taken to the Privy Council as a matter of right. I submit, Lord Chancellor, that there is no difficulty in understanding that position. Cases which come up to the High Court on appeal are decided by a higher tribunal than the Magistracy. In some cases there is a jury, in other cases there are assessors; and therefore one right of appeal has been given to the High Court. In cases tried by the Magistracy there is one appeal provided for; and, so far as the jurisdiction of the High Court is concerned, it is not really the jurisdiction of an appellate Court in the true sense of the term. It is the jurisdiction of a Court exercising discretion, and therefore it is a modified and a very limited form of appeal. Secondly, if you provide an appeal in criminal cases to the Federal Court, I am convinced that you will have to provide at least twenty-five Judges to cope with the work.

Sir Tej Bahadur Sapru : More.

Sir Sultan Ahmed: More. Well, I am erring, as far as I can see from the comments of my friend, on the wrong side.

Mr. Zafrullah Khan : As it is, with giving them civil appellate jurisdiction, you will require at least twenty-five.

Sir Sultan Ahmed: Now, My Lord, one High Court, as far as I know, has got two Judges reserved for hearing murder cases only in that Province throughout the year.

Chairman: What Province is that?

Sir Sultan Ahmed : I think the Punjab.

Mr. Zafrullah Khan: There are very often four sitting for that purpose in two divisions almost constantly.

Sir Sultan Ahmed: Constantly throughout the year.

Chairman: In murder cases only?

Mr. Zafrullah Khan: Yes, hearing appeals in which death sentences have been passed.

Sir Tej Bahadur Sapru: It would be very interesting, My Lord, to look into the criminal statistics about murder cases in India, and the criminal litigation.

Sir Sultan Ahmed: There is another Province, Oudh, where the figure runs pretty high—that is, about 100 in the course of the year, 100 death references sent to the Chief Court. I am not taking into consideration Burma, where the record is perhaps even higher.

Sir Tej Bahadur Sapru: Burma and the Punjab are the highest.

Mr. Zafrullah Khan: And the United Provinces comes third!

Sir Sultan Ahmed: That is right. I would therefore respectfully suggest that it is unthinkable to have such cases brought to the Federal Court. Even in England, My Lord, it is only very recently that you have established a Criminal Court of Appeal.

Chairman: Yes—1907, was it not?

Sir Sultan Ahmed: Yes. Before that, there was no question of having any appeal in criminal cases.

Chairman: No—only Crown cases reserved.

Sir Sultan Ahmed: Yes, but those are only very few. In India, however, we have provided for one appeal throughout.

Mr. Jinnah: May I just interrupt. That is not correct. In the High Courts of the Presidency towns there is no appeal.

Sir Sultan Ahmed: There is an appeal in every case. I am not talking about Crown cases reserved.

Mr. Jinnah: In the High Courts in Presidency towns there is no appeal.

Sir Tej Bahadur Sapru: That is right, on the original side.

Sir Sultan Ahmed: I am talking about the High Courts on the appellate side. In Presidency High Courts, again, points are reserved by the Court in suitable cases, or a fiat is granted by the Advocate-General, and cases are taken to the Court of Appeal on his fiat.

Mr. Jinnah: Only on questions of error of law but no regular appeal.

Sir Sultan Ahmed: No regular appeal on facts, but either on a point of law reserved by the Judge or on a fiat. That is quite right. I am obliged to Mr. Jinnah.

Sir Provash Chunder Mitter: There is an appeal from the Court of Sessions.

Sir Sultan Ahmed: There an appeal has been provided for, whether there is a trial by jury or not.

Sir Provash Chunder Mitter: Only on a trial by jury when there is misdirection.

Sir Sultan Ahmed : But when there are assessors, both on facts and on law.

Then, another class of cases has been suggested which might be brought to the Federal Court, and those are cases of acquittals which have been brought to the High Court on appeal by the Local Government under Section 417 of the Criminal Procedure Code, and where the acquittal has been set aside and a conviction has been recorded. It is suggested that it is a great hardship that there should be no further appeal. My Lord, I do not see the difference between a case of conviction and a case of acquittal. In either case, there is one right of appeal which has been given; and once that appeal has been heard, I think there ought to be finality. I therefore respectfully submit that there is no reason shown why an exception should be made in a case where an acquittal of the accused by the lower Court has been converted into his conviction by the High Court, which alone has power to deal with matters of acquittals by trial Courts.

There is a last point on which I would like to make my submission. As regards the number of Judges who will be required for the Federal Court, considering that I am in agreement with my friends, Sir Muhammad Shafi and Sir Tej Sapru, with respect to the right of appeal against the decisions of the High Court in civil cases, I think you must provide for at least ten Judges of the Federal Court. My Lord, through the courtesy of my friend, Sir Edward Chamier, I have got the figures of appeals in civil cases in the Privy Council within the last three years. In 1928, there were 91 appeals; in 1929, 122; and in 1930, 77. On an average, you may take it at 100 a year.

Sir Tej Bahadur Sapru : Not 100. The average is very much less than that. The average works out at between 60 and 70. That is a five years' average.

Sir Sultan Ahmed: I have got three years' figures here and it is from these I take it.

Sir Tej Bahadur Sapru: 1929 was an exceptional year. Otherwise, you have anything between 60 and 70 in the course of a year—sometimes 80.

Sir Sultan Ahmed : I have only the figures of three years, and from those figures I have arrived at an average of about 100. It may be less; I cannot say. It may be 75; it may be 80; or it may be 60. Whatever it is, there is no doubt that, if an appeal is provided to the Federal Court in India, the number will increase. There is no doubt about that; we should be under no misapprehension as to that. Even then, I should think the number would not go to more than 200 or 250.

Sir Tej Bahadur Sapru: Yes, there I agree. Not more than 250. If you will permit me just for a second, may I point out

that, if you look into the statistics of the various High Court decisions, you will find that something like 70 to 75 per cent. of the decisions of the lower Courts are affirmed. Of the remaining 30 per cent., most of those cases you will find are of the value of Rs. 10,000 or below. So that the number of appeals that are likely to go to the Appeal Court is not going to be very large—it is going to be larger but not very large.

Sir Sultan Ahmed: Of the cases involving a value of less than Rs. 10,000 there will be very few in which a substantial question of law is raised.

Sir Tej Bahadur Sapru: You do not follow me. I said the number of cases which are affirmed by the High Court is about 70 to 75 per cent.; so that it is only out of that 25 per cent. where there are not concurrent judgments.

Sir Sultan Ahmed: I put it at an average of about 200 to 250.

Sir Tej Bahadur Sapru : It may be 300.

Sir Sultan Ahmed: Supposing it is 300, I submit that it would be possible for six Judges to deal with 300 cases in the course of the year. That is the reason why I have put down one Chief Justice and ten Judges—that is, eleven Judges altogether.

Chairman : Do you think they should sit in groups of three or five?

Sir Sultan Ahmed: Three. I find that, in many cases here, three Judges dispose of appeals from India. It is generally three, sometimes five, and in exceptional cases seven.

Mr. Zafrullah Khan : I hope you are keeping in mind that you will have a judgment of two Judges of the High Court which is being heard on appeal by three Judges, who will, in the case of a difference of opinion, decide the matter by a majority, and the judgment will be reversed probably by two Judges of the Supreme Court, where it has been pronounced by two Judges of the High Court. That will be the position.

Sir Sultan Ahmed: Yes. That would not, I submit, be a sufficient ground for providing in the constitution that there should be always five.

Mr. Zafrullah Khan : Not in the constitution.

Sir Sultan Ahmed: Or anywhere else.

Mr. Zafrullah Khan : It will be a rule for the Chief Justice to make.

Sir Sultan Ahmed: Taking everything into consideration, I submit that a Chief Justice and ten Judges ought to be sufficient for such a Court.

These are all the points on which I have to make my submission before the Committee.

Sir Maneckjee Dadabhoy: My Lord, This week, apparently is going to be a field-day for lawyers. I abdicated my first love about

twelve years ago. If I have any claim to-day to speak on this subject, it is only that, before I retired from the profession, I practised for a period of 32 years. I therefore cannot claim to speak with the same knowledge and direct touch to-day, with the profession, as three of my predecessors have done in the course of yesterday and to-day.

My Lord, both Sir Muhammad Shafi and Sir Tej Bahadur Sapru were perfectly correct in stating that the question of the Supreme Court has been exercising so much influence over the minds of the people during the last few years that it has now become a very important and paramount question. My Lord, if my memory does not fail me, I think the ball was set rolling about five years ago by my friend, Sir Hari Singh Gour, in the Assembly, when he brought forward a resolution for the establishment of a Supreme Court in India.

Sir Tej Bahadur Sapru: As a matter of fact, Sir Hari Singh Gour wanted to introduce a Bill so far back as 1921, but technical difficulties were encountered. I had to deal with that matter, and the view that was taken was that an Indian Legislature had no power under the present constitution to establish a Supreme Court, and therefore it was turned down.

Sir Maneckjee Dadabhoy: You have assigned the reason correctly; and so far as the date is concerned, I stand corrected. Also, in the Council of State, an attempt was made about four years ago to introduce a similar resolution; and I confess that, at that time, I opposed that resolution with all the emphasis and power at my command. But I do admit that the times have altered; and if a Federal Constitution is to be brought into operation, I do not see how we can possibly avoid the establishment of a Supreme Court, at least for the consideration and adjustment of certain important matters.

There has been, no doubt, a substantial change in the minds of people of various schools of thought; and, though I am a great believer in the value of the Privy Council to India, I do realise the considerations which have been urged with regard to a Supreme Court. Despite what has been said on many occasions with regard to the work of the Privy Council in this country, I believe that, in the influence which the Privy Council has exercised, by the judgments which it has delivered, on the appeals which were made to it from the various High Courts of India, it has exercised a considerable influence on the character of the Bar generally in India.

Therefore, as Sir Muhammad Shafi has said, the existence of a Supreme Court for India is now a judicial necessity. How far the Indian States will like the idea of the establishment of a Supreme Court in India, we shall know when we hear what the Chancellor, His Highness The Nawab of Bhopal, and the other representatives of the Indian States have to say. But, if my judgment is correct, I do not think they are in ecstasy over the pro-

posal or that they would receive the question of the establishment of a Supreme Court with very great favour.

I was very much struck with the observations of Sir Muhammad Shafi in his preliminary speech, when introducing the discussion on the question of the establishment of a Federal Court, and I would like, with your permission, to read a passage from his speech :—

> "What we have to concentrate our attention upon mainly is the range of jurisdiction which the Supreme Court is to possess. In determining this range of jurisdiction, I would not limit my horizon to the immediate requirements or even to what may be described as the near requirements of the case. I visualise the period when the proposed all-India Federation will have risen to its full stature—when the various constituent Units . . . will have begun to entertain the fullest confidence in the Legislative, Executive and Judicial machinery of the Federation, and to regard it as their very own. It is true that, at present, the Ruling Princes are somewhat nervous about the position that may be created as a result of the establishment of a Supreme Court in India having extensive jurisdiction over the whole of the Federation."

My Lord, I have no doubt that, when the Federation has been perfected and completed, when it has reached its full stature, the prophecy of Sir Muhammad Shafi may prove correct; but to-day, so far as the range of jurisdiction is concerned, I am inclined to differ from the distinguished lawyers who have preceded me in the discussion to-day; I would like, in view of various considerations, to limit the operation of the Supreme Court to certain matters directly connected with the interpretation of the constitution and federal laws. My Lord, with the greatest possible respect to such distinguished men and such distinguished lawyers, who are so well-known in our country, as my friends, Sir Tej Bahadur Sapru, Sir Muhammad Shafi and Sir Sultan Ahmed, I may not be able to go to that length; but I say, with great deference to them, that, in my humble opinion, in the present state of Indian affairs, in the present state of the financial position in India, it would be judicious and prudent not to multiply Courts. As, however, a Supreme Court will be essentially necessary, its jurisdiction should be limited to a range of certain questions only.

My Lord, I have given a little thought to this matter, and, in my opinion, the jurisdiction should be limited to the following matters. It should be confined, in the first instance, to all disputes between the Federation and the various Units; secondly, to disputes between the States *inter se;* thirdly, to disputes between the Provincial Units *inter se;* fourthly, between the States and the other Units; fifthly, all questions of interpretation of the constitution; sixthly, all questions of interpretation of the federal laws; seventhly, interpretation of all agreements between two or more

States; and, lastly, questions of boundary disputes between State and State who are in the Federation, and between a State and any Provincial Unit.

Mr. Jinnah: What disputes do you contemplate between the Federation and States and Provinces?

Sir Maneckjee Dadabhoy: Disputes about some internal Customs, or some boundary dispute, or something of that sort.

Chairman : Are you envisaging for a moment some question of re-adjustment of boundaries?

Sir Maneckjee Dadabhoy: No, not exactly that; but constitutional questions may arise.

Mr. Jinnah: My Lord. I understood Sir Maneckjee to say that he would confine jurisdiction first of all to the interpretation of the constitution; secondly, to the federal laws, and any question arising out of the federal laws that may be enacted by the Federal Legislature. But then he said: any disputes that may arise between the Federation and the Provinces or Units. Then he went on: between States *inter se,* between the Provinces *inter se,* and between the Provinces and the States. What disputes do you contemplate, with regard to these matters that you mention, which should be delegated to the jurisdiction of the Federal Court?

Sir Maneckjee Dadabhoy: On the interpretation of the constitution there may be differences between the States.

Mr. Jinnah : Anything else?

Sir Maneckjee Dadabhoy: There may be—I cannot say now what may happen hereafter when the Federal Constitution comes into being—there may be a hundred and one disputes of different characters which it may be difficult to provide for at this moment.

Mr. Jinnah: Do you say any dispute of whatever nature?

Sir Maneckjee Dadabhoy : No, I do not go to that extent.

Now, My Lord, in connection with this subject, various reasons have been assigned as to why the Supreme Court should be endowed with power to hear appeals from the High Courts and Chief Courts. The reasons which have been categorised are not numerous —there are not more than two or three which I have up to now heard. In the first instance, it is urged that appeals should be provided from the decisions of the various High Courts to the Supreme Court because many appeals have failed in the Privy Council owing to inability to instruct attorneys, owing to inability to give personal instructions, and to other causes. My Lord, I am aware of cases in which the Privy Council at times has not been able to do sufficient justice to Indian cases; but since the alteration in the constitution of the Privy Council, and since two men with Indian knowledge and experience have been put on the Board of the Privy Council, much of that difficulty and trouble has been removed. Of course, in the matter of the interpretation of personal laws as well as customary laws, the Privy Council

has in the past not always gone in the right direction. That trouble has now been obviated by the appointment of two lawyers of eminence during the last four years on the Bench of the Privy Council.

Sir Tej Bahadur Sapru : As a matter of fact, there are four now.

Sir Maneckjee Dadabhoy: Yes, thank you. That makes my point all the stronger. Cases which go to the Privy Council generally are with regard to the interpretation of law and statute, and important points which arise in connection with the interpretation of law and statute. It is not always that the Privy Council is concerned with questions of fact where personal instruction would be a *sine qua non.* I therefore, with great respect, differ from my eminent colleagues here, that one of the justifications for the establishment of a Supreme Court in India is this reason. Sir Muhammad Shafi gave two reasons—one about the diversity of judgments of several High Courts, and the other expenditure. I am fully aware that different High Courts, in regard to certain laws and matters, have interpreted the statutes according to their lights in a different manner, and the Provincial Courts are following the precedent laid down by their own High Court in administering their laws. But has that fact done any considerable amount of injury to the rights of the parties litigating, and does it necessitate a wholesale right of appeal—unlimited right of appeal as stated by my friends—both in civil and criminal cases, to the Supreme Court? With great respect to their learned opinion, I say it does not. Even admitting that in some cases there is a diversity of judgments, I do not think that, merely to attain an ideal of uniformity, there should be provided opportunities of further appeal in all cases to the Supreme Court. (I am now only referring to civil matters). My Lord, when I am saying this, I am speaking with some personal knowledge. Unfortunately, litigation is too rampant in India. It is the weakness of the parties.

Chairman: Are you speaking as a lawyer?

Sir Maneckjee Dadabhoy: I am speaking both as a lawyer and as a client. The country is poor, and I know the weakness of clients. I speak with the experience of a lawyer because, when I lost an appeal in the High Court, I was asked by my client, " Is there no other Court to which you can take me? " As long as there is an additional avenue open, it is my personal opinion that the litigant, however poor he may be, is sure to resort to it. I know of many a household which has been ruined over litigation in India. In many a big case which has been fought, the parties have ended up in absolute ruination. It has just been argued by our friend here that, on the statistics which he has obtained, there would not be more than 300 appeals to the Supreme Court. My friend has lost sight of an important factor. There may be 300 appeals to the Supreme Court; but one important factor has to be borne in mind, namely, that when you have the final Court of

Appeal in India itself, there will be a much larger inducement for more appeals to be instituted than otherwise. Personally, I think that, with our competent High Courts as now established, with their experienced European and Indian Judges—and there are largely Indian Judges now—on the various Benches, the decision of the High Court ordinarily is entirely sufficient; and I am of opinion that, during the initial stage of the life of the Supreme Court at any rate, we should not go to the extent of having all appeals from the High Courts to the Supreme Court. This is my personal view.

Next, both Sir Muhammad Shafi and Sir Sultan Ahmed have argued about the gross injustice which has been done by the power which is exercised by the High Court when the Government files an appeal against an order of acquittal.

Sir Sultan Ahmed: I never said that—I could not, because I fight an appeal every day myself!

Mr. Jinnah: What Sir Muhammad Shafi said was this, that in the case of an appeal which results in the reversal of an acquittal, there is undoubtedly a conflict of decisions between the lower Court and the appellate Court; and yet the man has no opportunity of going higher. In spite of the conflict, and on a question of life or death, a man has no opportunity of going higher—that is what he said.

Sir Maneckjee Dadabhoy: That very object can be attained in other ways, in my opinion. It does not necessitate an appeal to the Supreme Court. If, however, you are prepared to have an appeal to the Supreme Court only in such exceptional cases, where an order of acquittal has been set aside and a conviction made and a person sentenced to be hanged, there may be something in that; but I am also of opinion that, if such injustices take place, the difficulty could be got over by an alteration of the Criminal Procedure Code, giving power, if the party so desired, to go direct to the Privy Council. Nowadays, it is only in exceptional cases that the Privy Council interfere; but, on certification by the High Court, or something like that, there might be given a right to appeal as I suggest. There is no necessity, however, for giving a general right of appeal in all cases to the Supreme Court, simply on account of one hardship that has been pointed out.

My Lord, these are the reasons that are given for conferring a right of appeal in cases of civil disputes; but Sir Muhammad Shafi also went to the length of giving a right of appeal in criminal cases to the Supreme Court. As far as I could follow Sir Muhammad Shafi, he said there were about 300 Districts in India, and the number of criminal cases is well known to the lawyers here. If you are going to allow all this work to be thrust on the newly established Supreme Court, my fear is that that Supreme Court will never be able to do its own natural and legitimate work; and I am therefore entirely opposed to giving unlimited jurisdiction in criminal matters to the Supreme Court.

Chairman: Unlimited jurisdiction?

Sir Maneckjee Dadabhoy: I mean by "unlimited," that any person can take any case on appeal to the Supreme Court if he is dissatisfied.

Chairman: Leaving out questions of death sentences, are you in favour of giving the Supreme Court the power to increase sentences on appeal?

Sir Maneckjee Dadabhoy: Well, if you do, they will only require some other Court over it. I do not know, My Lord, whether I have made myself clear. On that point I only stated that, in a special case like that, if you wish to give a right of appeal to the Supreme Court, there may be something in that argument; but, personally, I do not agree with it. I do not say that cases of hardship or injustice have not arisen. There may occasionally arise a case of injustice or hardship; but, in the whole range of our Courts' work, that sort of injustice must occur occasionally everywhere, in every branch of the administration either of the civil or of the criminal law of the country; and that by itself, in my humble opinion, is no justification for giving this right of appeal.

Of course, when I am answering the questions raised by Your Lordship, I will refer to it; but, in this connection, I would also refer to the volume of work which will arise, and I do not think any Supreme Court with power to hear both civil and criminal appeals will be able to cope with the work unless you provide a large number of Judges. Unless you have at least twenty or twenty-five Judges, you will not be able to do the work. And what does that mean? The administration in India has already been made top-heavy in various directions. Are you going to enlarge the expenditure again by the establishment of a Supreme Court in which twenty or twenty-five highly-paid Judges will sit to do that class of work which is now ordinarily done by High Court Judges, who are perfectly able and competent to do that work? I am therefore not in favour of saddling the country, in the present state of its finances, with such uncalled-for expenditure.

Chairman: Do you envisage in your remarks any payment of Court fees by litigants?

Sir Maneckjee Dadabhoy: But, My Lord, if there is to be a civil appeal, I suppose there will be Court fees and everything else. There will be lawyers' fees and Court fees.

Chairman: I do not mean lawyers' fees, I mean Court fees.

Sir Manckjee Dadabhoy: Of course, there will be Court fees.

Chairman: I do not want to go into details, nor do I wish to reveal confidential things; but there is one class of Court in this country which, owing to its fees, entirely pays for all its Judges. It is self-supporting. There is another class of Court which is in exactly the opposite position.

Mr. Jinnah: There is another class of Court in India that makes money.

Sir Tej Bahadur Sapru: Most High Courts do.

Sir Provash Chunder Mitter: My Province mainly exists on that.

Sir Maneckjee Dadabhoy: And in his Province, My Lord, lawyers also exist on that.

Mr. Zafrullah Khan: Lawyers everywhere exist on that.

Sir Maneckjee Dadabhoy: In your Province, lawyers make fees of Rs. 25,000 to Rs. 30,000 a month.

Mr. Zafrullah Khan: More.

Sir Maneckjee Dadabhoy: And sometimes more. It is simply outrageous. My Lord, I do not mean for a moment to say that distinguished lawyers like Lord Sinha or Sir Tej Bahadur Sapru do not deserve these fees. I therefore think, taking all the circumstances of the case, it would be an excellent idea, in the first instance, to limit the jurisdiction at least to real questions affecting settlement of federal matters. In doing so, I am also of the opinion that we shall save the Indian States from a predicament; because, if no extensive powers or jurisdiction are conferred, and the Supreme Court is limited to the interpretation of the constitution or the interpretation of federal laws, the Indian States will not say it is a foreign Court—and they have made it clear that they are not going to submit to the jurisdiction of a foreign Court. They will be in the Federation themselves, and therefore their argument on that point will be very much weakened. I do not think there will be any real objection on their part to agreeing to this. Moreover, as I said at the commencement of my remarks, I, for one, am a great believer in the Privy Council. I am most deliberately of opinion that it is in the interests of India to remain in constant touch with the highest Court of Appeal in England. I firmly believe that, in this country, legal knowledge judicial acumen and judicial fairness prevail on a much larger scale than in any other country in the world. I think some of the decisions which the Privy Council have given in the past have thrown lustre on the Judges who gave those judgments, have made the legal task and the interpretation of laws in India far more simple, and have saved thousands and thousands of rupees to litigants. My Lord, I am therefore anxious that the direct right of appeal from the High Courts to the Privy Council should continue, at least during the initial stages of the Federation. Sir Muhammad Shafi, of course, said that the jurisdiction of the Supreme Court was to be limited from Rs. 10,000 upwards to a lakh of rupees. Sir Sultan Ahmed did not agree on that point, judging from what I heard him say. I entirely endorse his view; and I go still further, and I say that, wherever it is permissible, litigants should not be deprived of the right of appeal from the decisions of the High Court to the Privy Council.

With great respect to my friend, Sir Tej Bahadur Sapru, I think you will find it a very difficult task to fill appointments in the Supreme Court. Even now, it is a very difficult matter at times to get good men to take up appointments in the High Courts. Distinguished lawyers who make a lot of money will never consider the idea for a moment; and if you are going to have 20 or 25 Judges in the Supreme Court, I am at a loss to understand where you will get men of the right calibre and the right legal attainments to be equal to the important task of doing the work in the Supreme Court. I entirely agree with Sir Tej Bahadur Sapru that the Supreme Court, in its character and capacity, should be of such a nature as to gain the confidence, not only of the lawyers, but of the general public; but, as I see circumstances at present, I am a little nervous that we may not, for the time being, be able to get men of the right calibre unless their salaries exceed seven or eight thousand rupees.

Chairman: Do you mean eight thousand rupees a month? Would you put it into pounds? Would the yearly salary then be £7,200?

Sir Maneckjee Dadabhoy: For a Chief Justice of the Supreme Court.

Chairman: I am not talking about the Chief Justice.

Sir Maneckjee Dadabhoy: Speaking from personal experience on these matters, I do not think you will get a really first-class man unless you pay him a good salary. There are many mediocrities who are good lawyers, but you are not going to fill the Supreme Court with mediocrities.

Chairman: Are you envisaging that an ordinary Puisne Judge of the Supreme Court will get seven thousand a year?

Sir Maneckjee Dadabhoy: About a thousand rupees less; and if Income-tax which is now so heavy in India, is to be taken off that, what will the salary amount to? Nothing. It does not pay a good lawyer to take up such an appointment.

Chairman: You will consider the provisions in the American Constitution with regard to Income-tax in respect of Judges, and you will also consider the decided cases.

Sir Maneckjee Dadabhoy: That is another point. Ordinarily, however, as I say, you will not get competent men with great forensic attainments on small salaries.

I think Sir Muhammad Shafi also argued that the fixing of the salaries should rest with the Federal Government.

Mr. Jinnah: With the Federal Legislature.

Sir Maneckjee Dadabhoy: Yes, with the Federal Legislature. I am not sure whether my friend, Sir Tej Bahadur Sapru, concurred in that view or not, but I have some recollection that he also accepted it. Personally, I am distinctly of opinion that the question of salary should not be left to the Federal Legislature, but that it must be settled by the Crown. Likewise, the appointment

must be left entirely in the hands of the Governor-General, representing the Crown, who should, after taking various matters into consideration, fix the salaries. If it is left to the Federal Legislature, I dread to visualise what is going to happen. We have many distinguished lawyers here, and I do not think any of them would care to go on the Bench of the Supreme Court on the salaries that might be fixed by the Federal Legislature. Would Mr. Jinnah accept, even if you made him Chief Justice of the Supreme Court? Or would Sir Tej? Or would my friend Sir Sultan Ahmed? None of our best men are going to accept those salaries.

Sir Sultan Ahmed: You are getting a little personal!

Sir Maneckjee Dadabhoy: I am referring to men of your ability. Men of great ability will not accept them.

My Lord, I am glad you allowed Sir Tej Bahadur Sapru to open and discuss the larger question of the Judicature in India.

Mr. Jinnah: Sir Maneckjee, how is it that you get the most eminent lawyers in this country, making very large incomes indeed, willing to accept a seat in the House of Lords or on the Judicial Committee for £12,000 a year?

Sir Provash Chunder Mitter: Mr. Jinnah can probably answer that better than you can.

Sir Maneckjee Dadabhoy: I think Sir Provash is right; you are better able to give an explanation than myself.

Mr. Jinnah: My point is this. Is there nobody in India who might take that view?

Sir Maneckjee Dadabhoy: Well, My Lord, in the case of every gentleman who accepted the post, I know the special reasons why he accepted; but I do not like to go into personal questions.

Mr. Jinnah: You mentioned certain persons who are present here, and that is becoming personal!

Sir Maneckjee Dadabhoy: I only said that men of your ability will not take posts at such salaries. There are cases in which persons are prepared to make sacrifices, especially men who are on the eve of retirement and who have made large fortunes and who are patriotic enough to do that work; but you will not find any large number of lawyers willing to do a thing like that.

My Lord, as I was saying, it was a very appropriate thing that my friend, Sir Tej Bahadur Sapru, has opened the much larger question of the Judicature. He, with his long experience at the Bar, was just the right and proper person to speak on the subject; and I agree with and endorse many of his suggestions in that connection.

He has referred to the existing law which prescribes certain proportions for Judges of the High Court and lays down that so many appointments shall go to the Civil Service, so many to the Bar, and so on. I think the time has now passed when these appointments can be reserved in any proportion for the Civil Service, though I

fully appreciate their great work and the valuable services rendered by a large number of people, members of the Indian Civil Service, in the judicial sphere. If I correctly understood my friend, Sir Tej Bahadur Sapru, he fully appreciated the work done by those civilians, and he was against the ban being put on these people being on the High Court Benches; but he only protested, as far as I understood him, against the actual proportion. There may be cases in which Civilian Judges of great ability may be safely placed on the Bench, and they would be able to do their work with great credit to themselves and lustre to the Service. There may be such cases; and, therefore, all that I would go to the extent of stating is that the limit or proportion should be removed, but there should be no permanent bar on any class of people to hold appointments in the High Court or in the Supreme Court, though it would be much better, as I appreciate, that practising barristers would be the right and proper persons from whom the selection should generally be made. As regards the qualification, I think that no barrister and no lawyer of less than 10 years' standing should be appointed, not only in the High Court but also in the Supreme Court.

Sir Sultan Ahmed: It is 5 years now.

Sir Maneckjee Dadabhoy: Yes, it is 5 years now under the present Act, Section 101.

Mr. Jinnah: But I do not know of any case where a man of 6 years' standing has ever been appointed as a High Court Judge.

Sir Maneckjee Dadabhoy: But now that we are framing our constitution, it is natural that we should provide for everything, and should take all safeguards to provide against anything happening like that.

Mr. Jinnah: Yes, I quite agree, but I was only pointing out that it had never been done.

Sir Maneckjee Dadabhoy: As regards the age limit, I think that the present rule is too rigid. When a man has attained the age of 60 he possesses—at least this applies among the members of the Bar—ripe experience and knowledge; and so his services should be utilised at that age, and he should not be put on the shelf.

(The Committee adjourned at 4-12 p.m.)

PROCEEDINGS OF THE THIRTY-NINTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE, HELD ON THE 22ND OCTOBER, 1931, AT 11-30 A.M.

HEAD 8.

The Federal Court—(continued).

Sir Maneckjee Dadabhoy: My Lord, I shall resume the debate at the stage at which I left it yesterday, but I shall not detain the Committee very long this morning.

With regard to the appointment of the Judges of the various High Courts, I am in agreement with Sir Tej Bahadur Sapru that these posts should be thrown open to all branches of the profession and should not be limited to barristers only. During the last few years, these appointments, though of a temporary character, have been held with great credit and distinction by advocates and High Court pleaders, and their work in this capacity has convinced the profession that many of its members are as good as the barristers, and in some case they have even shown superior knowledge and culture. I am, therefore, in entire agreement with the proposal that these posts, in future, should not be confined to barristers only, but that the law should be so altered as to throw open these appointments to all branches of the profession.

So far as the actual number of Judges is concerned, which is one of the questions which Your Lordship put to us, I beg to submit that it would be much better to put a provision in the new constitution on the lines of that contained in section 101 of the present Government of India Act, where it is stated that each High Court shall consist of a Chief Justice and as many other Judges as His Majesty may think fit to appoint. A provision of this nature would meet all requirements, particularly as we know that it would be difficult at this juncture, without knowing all the functions which the new Supreme Court will exercise, to decide what number of Judges will be required.

Sir Akbar Hydari: What is your exact proposal in this respect? I am afraid I did not quite follow.

Sir Maneckjee Dadabhoy: My proposal is that the number of Judges should not be fixed by any provision in the constitution, but provision should be made on the analogy of that contained in the present law.

Mr. Joshi: It will come to appointment by the Secretary of State for India.

Sir Maneckjee Dadabhoy: I have said the appointment will, of course, rest with the Crown. You cannot leave these appointments to the Legislature.

Mr. Joshi: I am referring to the number.

Sir Maneckjee Dadabhoy: The number will be settled by the Chief Justice on the basis of what is required. The Chief Justice will, of course, advise the Government, and the Government will have to inform the Secretary of State, if the Secretary of State for India still continues in office then.

Mr. Joshi: What about the money? Will it be non-votable?

Sir Maneckjee Dadabhoy: Certainly. These matters must be left entirely to the discretion of the Crown. If you go on voting on these items, there will be great temptation for the Federal Legislature to vary, not only the numbers, but the salaries and everything else; and I think, therefore, that all these matters should be

non-votable. You will cause chaos otherwise, and it will not be possible to work the Federation well and harmoniously.

With regard to the venue of the Supreme Court, I am distinctly of opinion that the capital of India should be selected, for more than one reason, and that this Court should be located at Delhi.

Chairman: I do not think you need trouble about that; there is such a consensus of opinion on the point.

Mr. Sastri: Do you think it will have to go to Simla?

Sir Maneckjee Dadabhoy: No, I do not think that will be necessary.

Chairman: You mean that it will stop at Delhi all the year round?

Sir Maneckjee Dadabhoy: There is a good deal of difference of opinion at present about this exodus to Simla; and as most of these Judges will be Indian Judges, I see no reason why they should not stop in Delhi.

Mr. Iyengar: There are vacations now.

Sir Maneckjee Dadabhoy: Yes, and they can arrange to take their vacations in the hot weather. I do not think it will be necessary to take the Judges to Simla, particularly as I believe that most of the Judges of the Supreme Court will be Indian Judges, and will not make any objection to working in Delhi. I suppose the Supreme Court will go to the expenditure of maintaining a library there at least, if they are going to do the work.

Then, as regards the appointment of a Registrar and other staff, I think the matter must rest with the Chief Justice. He is the best man for that, because he has to get work out of his staff, and he is just the proper man to know what his requirements are. He will have to get the work done, and therefore it is necessary that he should have full power. Of course, for the sake of formality, perhaps the sanction of the Governor-General will be necessary; but in the main the recommendations should, in my opinion, rest with the Chief Justice.

Then as regards the Rule-making power, of course it will be necessary to vest that power in a Committee; but that Committee, I would suggest, should always be presided over by one of the Judges—either the Chief Justice or one of the other Judges.

Now, My Lord, I am entirely in agreement with the caveat entered by Sir Tej Bahadur Sapru as regards most of our High Courts not being efficiently manned, and the resort which has to be made now and then to the appointment of temporary Judges as additional Judges. I quite agree with what Sir Tej Bahadur has said, that these constant appointments, which have to be made from time to time, have a demoralising effect on the Bar. These appointments are often solicited by junior members of the profession who are very often not very competent men.

Dr. Ambedkar: You were once appointed.

Sir Maneckjee Dadabhoy: I did not solicit it.

Sir Tej Bahadur Sapru: That is not confined to the juniors.

Sir Maneckjee Dadabhoy: But I think it would be better that the constitution of each High Court should be so framed that there should be sufficient men to cope with the work. I will leave that point now.

I am also distinctly of opinion, My Lord, that the appellate powers of all the High Courts should be placed on a footing of equality. Sir Tej Bahadur Sapru did point out yesterday that, in some cases, like Allahabad, Patna, Lahore and other places, the High Courts have no powers to issue writs of mandamus, habeas corpus and other writs. I think it would be to the common interest and advantage if a uniform policy were established, and that the High Courts should be put on a footing of equality as regards the powers and privileges they can exercise.

There now only remain for me one or two questions, and I will not take more than a few minutes. In the case of a Bill before the Federal Assembly which violated any fundamental constitutional principle, Sir Muhammad Shafi recommended in the course of his argument that, on representation to the President, the suspension of the debate may take place. I am not in favour of stopping the proceedings of the Federal Assembly by any interruption, through Law Courts, by way of injunctions or in any other way. I think that is not a correct procedure; and moreover, in matters of discriminatory legislation, or in matters affecting various important questions, such as religious rites or other matters, this power may be exercised under the influence of temper or passion or anything like that, and it would not conduce to the equanimity of the Legislature. My Lord, the Federal Structure sub-Committee fully anticipated this difficulty and intimated their view points in paragraphs 16 and 22 of their Report. Paragraph 22 says:—

> "*Bills affecting religion and Commercial discrimination.*—The question whether Bills relating to such matters as the religion or religious rites and usages of any class of the community should require the Governor-General's previous sanction to introduction will require consideration, as will also the question of discrimination between different sections of the community in matters of trade and commerce. There was general agreement that in these matters the principle of equality of treatment ought to be established, and various methods were suggested for the purpose. The sub-Committee content themselves, however, with saying that it is one which should be further examined and discussed in consultation with the various interests concerned."

My personal opinion is that, when an exigency like this arises, the President should refer the matter to the Governor-General, and it will be open to the Governor-General to obstruct the further passage of the Bill if he thinks it necessary to do so. Under para-

graph 16 of the Federal Structure sub-Committee's Report, we have recommended the maintenance of certain powers in the hands of the Governor-General regarding the introduction of Bills; and, My Lord, I think this would be a correct procedure to adopt in matters like this. Of course, if the Bill is passed into an Act, it will be open to challenge when a cause of action arises; and as far as I am concerned, I think there ought to be no period of limitation prescribed in these matters. In fact, it would be practically impossible, in my opinion, to fix a period of limitation. A cause of action may arise twenty or twenty-five years after the passing of a Bill. Some party's interests may be so involved that he may impugn the validity of the Act itself as offending against any part of the constitution. A cause of action might arise at a later stage. In such cases it is therefore necessary that there should be no period of limitation, and that a suit to declare the Act invalid or *ultra vires* can be brought at any stage by a party aggrieved.

Chairman: I want to follow you on that point. You say that any party ought to be able to bring a suit like that at any distance of time, no matter whether he has got any grievance himself. Supposing, we will say, twenty-five years hence, a gentleman who is rather an inquisitive gentleman, having no personal suit, reads through the Act of Parliament, says that is *ultra vires* and starts a suit—do you say he should be permitted to do that; or do you say that, when he himself has some private grievance and institutes a private suit, on such an occasion he can impugn the Act of Parliament? Because if you are going to leave it generally, as you leave it, anybody can sue twenty-five years hence for a declaration that any section is *ultra vires*, quite independently of the question whether he has any personal suit. Do you follow what I am putting?

Sir Maneckjee Dadabhoy: I fully follow, My Lord, in a private dispute, if you leave it open for an indefinite period, that is when his grievance arises, when a party's cause of action arises, that he has the remedy. It seems to me that in general matters too it would be somewhat unfair to prescribe a period of limitation. I say that for this reason. I know that, in some Statutes, we have said that the suit should be brought within a prescribed period.

Chairman: I am not on that.

Mr. Jinnah: Sir Maneckjee, can you make a Statute, which is *ab initio ultra vires, intra vires* by the Law of Limitations?

Sir Maneckjee Dadabhoy: No; I agree with you there.

I am also of the opinion that the advisory jurisdiction should be maintained. It is a very useful power. The power of the Governor-General to refer to the Federal Court for judicial decision any question of a judicial nature should be retained. It is an essential power, and I am of opinion that this power can be safely preserved. Provision may be made, I submit, on the analogy of the Judicial Committee Act.

My Lord, I have nothing further to add.

Mrs. Subbarayan: Lord Chancellor, I intervene in this debate on a very highly technical matter with much diffidence; but, in the course of the discussion on the Federal Court, I have been struck with one matter in particular, and as I think it affects the interests of women, I feel that I must express my views on it.

It was suggested that, in legislation in which it is alleged that a question of fundamental rights is concerned, the President of the Legislature should be obliged, if the majority of the Members representing the community affected insist on it, to refer it for the opinion of the Federal Court, pending whose decision discussion must be suspended. I do not desire to say anything about the legal or technical aspects of this suggestion; but it seems to me that a power of this indefinite and sweeping kind might be invoked to block progress on matters of social welfare. I have been thinking of it in connection with social legislation, in which I am deeply interested, and I feel that there is strong ground for criticism of this proposal from that point of view. I feel that there is very urgent need of social legislation if we are to achieve national progress in India. Certain aspects of social legislation, however, are liable to be regarded by the very orthodox of any community as affecting the fundamental rights of religion. In particular, legislation to alter or improve the position of women sometimes arouses the cry that religion is in danger. Take, for instance, measures like the Widow Marriage Act, or the more recent measure known as the Sarda Act, passed by the Central Legislature, the Devadasi Act, or the more general measure, the Hindu Religious Endowments Act, passed by the Provincial Legislature of Madras. If one looks back on these measures, now generally regarded as wise and necessary, one realises that, if this provision for referring such matters by injunction to a Court of Law had been in force then, they would have been subjected to great delay. I fear very much that such a provision will lead to the blocking, perhaps the continuous blocking, of reformative measures, and great delay and expense in getting them through both Legislatures and Courts. The provision may be very liable to general abuse. It may become a powerful weapon in the hands of any party that wishes to pursue purely obstructive tactics. It might even continuously block legislation. I therefore feel very strongly that the proper remedy, for those who think that their fundamental rights are affected by any particular Bill, lies in the ordinary Courts of Law after that Bill has become law. If there is a real contravention of fundamental rights, the Court of Law will see that justice is done. This would prevent dilatory or obstructive tactics in the Legislature.

I think these remarks also apply to the suggestion made by Sir Maneckjee this morning. My desire is that there should be no complicated machinery which could be used to obstruct the passage of any measure for social legislation.

Sir Maneckjee Dadabhoy: That is what I said this morning. The power should be maintained in the Governor-General to obstruct the passing of any such Bill.

Mrs. Subbarayan: I do not want any power which will obstruct the passage of such a Bill; and it will also be putting the Governor-General in a difficult position.

Sir Maneckjee Dadabhoy: The Governor-General has even now got powers under which a Bill must be submitted to him.

Mr. Iyengar: That is on questions of danger to public safety. That is the only power he has now.

Sir Maneckjee Dadabhoy: All the Bills have to be submitted to him for his sanction. That is the power preserved even to-day. He may refuse his sanction to-day.

Mrs. Subbarayan: That is before the Bill is introduced, not during the course of the passing of the legislation. I do not know all the legal technicalities, of course.

I make these few remarks, Lord Chancellor, entirely in the interests of social legislation in general, and in particular of social legislation affecting women. I hope the Committee will appreciate the importance of facilitating social legislation as much as possible for the sake of our national progress.

That is all I have to say.

Sir Mirza Ismail: Lord Chancellor, I have been asked by the Indian States Delegation to state their views with regard to the proposed Federal Court. They recognise that such a Court is necessary in order to enable the Federation to function properly and to reassure the federating States that their rights will be adequately safeguarded under the new constitution. The manner in which the Federal Supreme Court should be brought into existence requires some consideration. The States naturally attach great importance to the principle that the creation of the Federal Court should not affect their sovereignty in any degree. It will be necessary, therefore, to make it clear that the Federal Court derives its jurisdiction, not from the Crown alone, but from the Federating States as well.

The primary function of the Federal Court would of course be to deal with cases arising under the constitution and federal laws; but some of us feel that, with the consent of the State or States concerned, it may be made possible for the Court to adjudicate in disputes of a justiciable nature between States and British India, or between State and State, even in non-federal matters such as boundary disputes, rights of irrigation, etc. It is of course understood that in any case, as Your Lordship has clearly indicated, questions of paramountcy, which would be reserved to the Crown under the proposed constitution, would necessarily lie outside the purview of the Federal Court. We feel sure that the judicial talent and experience available in the States will be utilised in making appointments to the Federal Supreme Court.

Having made these general observations, I proceed to give categorical replies on the several points referred to in the questionnaire.

The first question is:—

> "Should members of the Federal Court be appointed by the Crown and on what tenure?"

Our reply is that Judges of the Federal Court should be appointed by the Crown as the head of the Federal State, and that tenure should be during good behaviour, subject to an age limit. They should be removable by the Crown on an Address from both Houses of the Legislature in the same Session, praying for such removal on the ground of proved misbehaviour or incapacity.

The second question is:—

> "Should the Court have an original and an appellate jurisdiction or only an appellate?"

The Court should have both original and appellate jurisdiction, as explained in the replies to questions 3 and 4 below.

The third question is:—

> "Should the Court have an exclusive original jurisdiction, *e.g.*, in the following matters (non-justiciable matters being excluded)—
>
> (*a*) disputes between the Federation and a State or a Province in any matter involving the interpretation of the constitution;
>
> (*b*) disputes between two States, two Provinces, or a State and a Province, in any matter involving the interpretation of the constitution;
>
> (*c*) the interpretation of agreements between the Federal Government and a State or a Province, or between two States or two Provinces, or between a State and a Province, and any question arising thereunder."

Our answer is that the Federal Court should have exclusive original jurisdiction in these matters.

The next question is:—

> "Should the Court have an exclusive appellate jurisdiction from State Courts and Provincial High Courts, *e.g.*, in any matter involving the interpretation of the constitution."

The Federal Court should have exclusive appellate jurisdiction from both the State Courts and Provincial High Courts only in cases in which a point of Federal law is involved or in which any issue arises under the constitution.

The fifth question is:—

> "Should provision be made for special references by the Governor-General to the Court as under Section 4 of the Judicial Committee Act, 1833?"

Our answer to this question is in the negative.

The next question is:—

> " Should there be a right of appeal from the Federal Court to the Privy Council as of right or by leave of the Court, the right of the Crown to grant special leave of appeal to be preserved in all cases? "

Our answer is that, so far as the Indian States are concerned, there cannot be any appeal to the Privy Council whether as of right or by special leave. Such an appeal would imply the subordinating of the States participating in the setting up of the Federal Court to a tribunal which derives its authority exclusively from the Crown; and therefore no appeal should lie even by grant of special leave by the Crown.

The last question is:—

> " What provision should be made for the enforcement of the judgments of the Courts in the States and in the Provinces respectively? "

The lower Courts would execute the decrees of the Federal Court, with the help, if necessary, of the Governments concerned. There is, however, no objection to investing the Viceroy with power to enforce compliance in the last resort.

That finishes my statement.

Chairman: There is only one point I want to ask you about in order to be clear. I gather you said the States would not at present be willing to allow any appeal to the Privy Council, either as of right, or by leave of the Federal Court, or by the exercise of the King's prerogative, giving the leave to appeal?

Sir Mirza Ismail: Yes.

Chairman: I rather gather that the reason for that is this, that they would be referring questions to a tribunal which was appointed by people outside them. I venture to suggest for your consideration—and only for your consideration—this point. The reason why the States would be willing to go to a Federal Court would be because, in the exercise of their sovereign power, they would consent and confer jurisdiction upon that Court. They could also by reason of the exercise of their sovereign power agree to confer jurisdiction on the Privy Council, should they be willing to do so. I do not want you to answer anything. All I am saying is this. The reason why you say " We will go to the Federal Court " is because you will, so to speak, exercise your sovereign power by giving consent to the jurisdiction. I only venture to suggest for your consideration, and not for an answer now, that you could, in just the same way as you confer that jurisdiction, by the exercise of your sovereign power, on a new Court like the Federal Court, also confer it on the Privy Council.

Mr. Gandhi: I should like to put a question to Sir Mirza Ismail, if I may. Sir Mirza, do you contemplate in any circumstances any right of appeal on the part of the subjects of Indian States to this Federal Court?

Sir Mirza Ismail: I think so, Mahatmaji. In regard to matters arising under the constitution or federal laws they would, in the ordinary course, have the right of appeal to the highest judicial tribunal competent to deal with such questions.

H.H. The Maharaja of Bikaner: My Lord Chancellor, After the lucid explanation given by my friend, Sir Mirza Ismail, which represents the views generally of the States Delegation, there is no necessity for me to go over the same ground again, except to express my personal general agreement with the views Sir Mirza Ismail has put forward on our behalf. The point which Your Lordship has just raised will no doubt be considered by our Delegation in due course. I am asked to make one point clear in regard to the reply we have given to question 4. That had been settled, but evidently there is a slip as to one sentence. The question was:—

> "Should the Court have an exclusive appellate jurisdiction from State Courts and Provincial High Courts, namely, in any matter involving the interpretation of the constitution?"

The reply given by Sir Mirza Ismail is:—

> "The Federal Court should have exclusive appellate jurisdiction from both the State and Provincial High Courts only in cases in which a point of federal law is involved or in which any issue arises under the constitution."

The words I am asked to suggest should be added are words which I think the Delegation had intended, but there has been a slip. They are these words:—

> "except in matters which, though federal, are administered by the States themselves."

Beyond this, Sir, I do not think there is anything for me to say except that we prefer the name Federal Court to Supreme Court, because we want it for Federal purposes. With regard to that Court, I simply want to say this, that, as in matters affecting constitutional issues or financial issues, so in regard to the Federal Court, it will be necessary to make it clear that, beyond what the States Delegation have said and what is agreed upon hereafter by the States, the Federal Court should not be taken as implying anything as accepted by the States in regard to other matters which affect the sovereignty and the internal autonomy of the States. That is the only other point which I wish to make clear.

Now, Sir, I am leaving tomorrow. I am very sorry to have to leave before this Conference and the Committee work is concluded; but unfortunately I must do so on the grounds of health. Medical advice is very insistent that I must not stay here during the winter, and there are other pressing State matters requiring my presence in my State. May I take this opportunity of tendering to you, My Lord Chancellor, once again, my own grateful thanks and my respectful tribute—which view is shared by all on this side, as on the other side—for the very great courtesy, the patience and the sym-

pathetic manner in which you have handled all these problems. I wish also to thank our friends, the British Delegates here, and especially the Secretary of State, who we hope will be able, in non-federal matters also, to write another chapter in the history of the States and our relations with the Crown. I further beg to thank all British Indian Delegates for their very great courtesy and the understanding manner in which the vast majority of our British Indian brothers have understood the difficulties and the standpoint of the States and have tried to meet us, as I hope they have found we have tried to meet them. My thanks are specially due to Mahatma Gandhi, who, may I say again, we are so glad to see amongst us this year.

I think it is quite unnecessary for me to reiterate my strong faith in federation. Even though I shall not be here, I hope to do service to this Committee and to this Conference and to the great work before us in India with my brother Princes and others, when I get back. I do think we should not be disappointed by any measure of disagreement here and there which we meet. I do not believe that the settlement of these questions, the drafting of a constitution, and putting it into effect, will be beyond human ingenuity or the statesmanship of His Majesty's Government, and our British friends here. With the co-operation and understanding between British Indians and the States, which this Conference has greatly helped to promote, I hope we shall be able before long to see the scheme of federation launched and brought into existence. But, My Lord Chancellor, there will yet be some more points—for instance, what you referred to the other day as "loose ends." I do beg Your Lordship and our British friends and His Majesty's Government to realise that further delay in these matters will be disastrous to the Empire, and to India, including the States, and to all of us. I do hope next time we shall not be meeting here, or elsewhere, with such a large Conference. I hope we shall be encouraged by the great measure of agreement which is undoubtedly manifested, in spite of certain differences, which, I repeat, I hope will be settled in some way or other. Where there is a will, there is a way. I hope we shall have the pleasure of welcoming you, My Lord Chancellor, in India, with a strong but small group of friends and supporters of federation from His Majesty's Government and the various British political parties; and that, by the spring, when the Chamber of Princes will also have met, there shall be ready an agreed scheme which, I hope, will be put through by Parliament. I think, Sir, beyond tendering my personal thanks on this occasion also to all my colleagues, Their Highnesses and the various Ministers with whom I have been so long associated, it only remains for me to say that I leave full of confidence in our leader, His Highness, the Chancellor of our Chamber of Princes; and I hope the Indian States will be able further to contribute towards reaching the goal which we all have in view.

Chairman: Your Highnesses and Gentlemen, I am sure I am only interpreting the wish of all of you when I say we should place on

record our great thanks to His Highness of Bikaner for the assistance and advice which he has given us throughout these proceedings, not only now but on the last occasion when we had the pleasure of meeting him. He is gifted, if he will allow me to say so, with great powers of speech and great powers of expression; but I know that he has had to work very hard in the evening and in the early mornings too, in order to place before us his views, which have been so very helpful. It reconciles us a great deal to the difficulties we have had when we remember the courtesy and the skill with which he has endeavoured to solve them. I do not think people outside this room realise the very great progress that we have made. As a matter of fact, the measure of agreement has been very large. I should think, upon the majority of things, we have come to an agreement. With regard to one or two rather difficult questions, I do not for a moment say we have disagreed. With regard to them all I say is we have not yet come to an agreement. I am very hopeful that, upon those matters, we shall come to an agreement, as we have done with regard to a great many of the other matters. It only remains to wish His Highness a safe return to his native country and also a speedy restoration to the good health which he generally enjoys.

Head 4.

Distribution of Financial Resources between the Federation and its Units.

Discussion on the Report of the Federal Finance sub-Committee—(concluded).

Lord Peel: Lord Sankey, May I take advantage of this general and admirable spirit of harmony, which now seems to be prevailing in the Federal Structure Committee, to make one or two observations and to make one or two suggestions about the Report of the Finance sub-Committee. I may say that these suggestions are largely founded on discussions that have taken place, as is generally known, during the last few days. I do not think there will be anything at issue on the first suggestion, because really it has already been accepted; and that is that this Federal Structure Committee should agree that the principles set out in the Report of the Finance sub-Committee should be accepted as a general basis on which this part of the constitution is to be drafted. I think probably that will be accepted for this reason, that a general approval has been expressed already of the principles contained in that Report, and, in fact, the main criticisms were directed to the proposals connected with the setting up of the Expert Committee, because it was feared that that Expert Committee might have a little too much latitude and might interfere with some of the admirable principles that were laid down by the Finance sub-Committee. By implication, therefore, the very criticisms brought against those proposals seem to approve of the principles in the Finance sub-Committee's

Report; and I think, perhaps, on that ground there will be general assent to the principles set out in the Finance sub-Committee's Report.

Now I come to matters which have been rather more controversial. I need not, perhaps, remind the Federal Structure Committee that our previous suggestions was that there should be two Committees for dealing with some of these matters, with a Chairman who would be the same for both Committees. It is not really necessary, I think, to press that part of the suggestion—it may ever be more convenient that the Committees should operate separately, but the suggestion I am putting forward is this. There should first of all be a small impartial Committee which should investigate the questions connected with the States' contributions, ceded territories, the position of the Maritime States, and so on. Now, the question of the Maritime States need not necessarily be settled, I think, before the Bill becomes an Act; but the other matters—the question of the States' contributions and the ceded territories—have to be gone into, and gone into carefully. The first suggestion is, therefore, that this small impartial Committee shall deal with those problems and, of course, report as quickly as possible. I am bearing very much in mind what has been said about delay, and I think everybody will see that these suggestions are made with a view to minimising any possible delay and getting the business done as quickly as possible.

The second Committee suggested to be set up is to some extent varied from the original proposal. It was to be a Committee which should deal with the various problems submitted to it, and might have some freedom even to make alternative suggestions on matters of principle. Well, there was a good deal of anxiety expressed in some quarters that that might, I will not say lead to the tearing-up of the principles set out in the Finance sub-Committee's Report, but at least might give too much latitude to that Committee. The new suggestion cuts down considerably the functions of this Committee, and limits its powers. It is suggested that it should be a fact-finding Committee, to be appointed in India, consisting of officials familiar with questions of finance, including, of course, States' finance.

Now, I was not going to make any suggestion for the moment as to the precise reference of this Committee; but it would clearly have to deal with and report upon such subjects as the division of pension charges, and the question of the classification of the pre-Federation debt as contemplated in paragraph 6 of the Finance sub-Committee's Report. It would also have to calculate the effect upon the Provinces of various matters—and they are very few really, I think; two or three at the utmost—such as allocating the proceeds of the Income-tax to the Provinces. These matters would not take very long; and then it would have to try to give a general estimate of the financial position of the Federation in its earlier years, and it would also have to show what was the result of making Corporation tax, Commercial Stamps, Tobacco excise

and perhaps other excises, Federal subjects. I think there is no doubt that this Committee could do its work very quickly. I suppose it would be possible, if necessary, to fix a time limit within which it should report.

When you have got these facts together, certain questions would have to be decided which can only be decided in the light of the facts as found by that Committee. There would be such subjects as the exact detailed form of the list of Federal taxes, and a final decision would have to be taken about Corporation tax and any specific Federal excises. Then there would be the initial amount of the Contributions from the Provinces, and the precise period within which these and the States' contributions should be wiped out, and the precise method according to which Income-tax would be returned to the Provinces.

Now, when these matters are decided in the light of the facts found by the Committee, the question would arise—and that question has been asked by Sir Tej Bahadur Sapru, among others—as to how or in what way the parties concerned should be consulted. One proposal has been made that a small Committee of the Conference might be set up to deal with those matters; but, after very careful consideration, the view of the Government is that it would be a mistake at the present moment to decide or settle upon the exact form and method which these consultations should take. Their view is that it would be far better to wait till nearer the end of the Conference, for this reason, that these are not the only points which may have to be considered after the Conference is over. There may be, and very likely will be, other points of substance affecting the Federation which will not have been decided when the Conference closes. I think it is obvious that, with the great range of subjects which have to be dealt with, some of these matters will still be left over. I am alluding now—and laying stress upon the fact that I am only alluding—to matters of importance affecting the Federation. The Government are prepared, before this Conference closes, to make proposals as to the procedure for consultation on such matters. This procedure, of course, must be followed in the interval before the new Government of India Act is passed. What I should like to make quite clear is this, that there will be no delay in this case, because the drafting of the measure can go on. There would be no delay, therefore, in the drafting of the measure; but the Government will make it quite clear, before the end of the Conference, what, in their view, is the best method of consulting the parties concerned on these proposals.

I hope that these suggestions will meet the views which have been expressed by the members of the Committee. I can sum them up very shortly.

There is, first of all, the general acceptance, as a basis for drafting the Bill, of the principles laid down by the Finance sub-Committee. Then there are these two Committees to be set up, the one a small body dealing with the question of the States, and

the other a fact-finding Committee which can get to work rapidly and provide the material on which final decisions are taken. Then, before the end of the Conference, the Government must state its proposals and make its own recommendations as to the best method of consulting the parties concerned on the few points which may be left over to be decided after these Committees have reported.

I put these proposals forward, and I hope they will meet with general acceptance by the Federal Structure Committee. I think it will be seen that very considerable efforts have been made to meet those difficulties which have been raised by members of the Federal Structure Committee and to produce a scheme which will conduce to that general harmony of which His Highness of Bikaner has so eloquently spoken. I hope these points will be favourably considered and accepted by this Committee.

Chairman: We are very much obliged to Lord Peel. Certainly great strides have been made towards coming to an agreement, and I think the differences have nearly all been composed. I hope we shall do our best to accept that.

Sir Akbar Hydari: My Lord, I entirely endorse what Lord Peel has said; and this represents what was really in our minds.

Dr. Ambedkar: I should just like to say one thing. Lord Peel said just now that there was general agreement regarding the principles enunciated in the Report of the Federal Finance sub-Committee. Now, whatever may be the view of the other members of the Federal Structure Committee, I should for myself like to make this reservation, that I certainly do not agree with the principles enunciated by the Federal Finance sub-Committee; and I should for myself like to say that I have no objection to the appointment of this Committee, provided it is distinctly understood that the Committee has a right to suggest alterations and amendments of the principles, in order that the future financial system for the Federal Government may be a sound system.

Mr. Gandhi: I should like to say a few things, Lord Chancellor, with your permission. I have very serious misgivings about the result of this proposed Committee, although the scope of it has been very considerably altered, and therefore it is less open to objection. I would, however, in order not to press my objection at this stage, suggest, along the very lines adumbrated by Lord Peel, that this question might be taken up at a later stage when we are about to gather the loose ends. He says—I think very properly—that His Majesty's Government cannot at the present stage say what would be the machinery adopted in order that the conclusions of the proposed Committee might be examined by some Committee or some body that would be in a way representative of the Round Table Conference. I think that is a very sound objection. There will undoubtedly be several matters left over by the time the deliberations of this Committee and of the Plenary Session of the Round Table Conference are concluded.

If rumour in this case is not baseless, we may hope that November 10th will be the final day of our sitting—I mean the sitting of the Round Table Conference also—and, if that is so—and I hope it is so—there would be things left over with regard to certain details, and perhaps also with regard to fundamental principles, for which some machinery will have to be devised. It might then be proper to endorse the appointment of the Committee which Lord Peel suggests, and which His Majesty's Government seem to desire; and, if that is done, my objections need not be pressed. But, at the same time, I should like to state my objections.

As members are aware, on behalf of the Congress there is a claim or demand that there should be an impartial investigation of these obligations, financial and fiscal, that the National Government will be called on to shoulder. It seems to me it would be putting the cart before the horse for me, representing the Congress, to say there should be an allocation of these debts, and that an Expert Committee should be called upon to make that allocation, when I know that at some stage or other I would be raising objections to the obligations themselves. If that Committee knew that the obligations were not so formidable as they appear to be to-day, their allocation would be of a different character; or, if they are absolutely rigid and not a rupee is to be taken away from them, that also would affect the character of the allocation. I have therefore the gravest misgivings as to the results of the deliberations of that Committee, and as to the action that I would then be justified in taking on behalf of the Congress.

My second objection is that this Committee, although its scope will be restricted, will really be doing the work that the National Government or the Federal Government should do. If His Majesty's Government feel insecure as to the ability of the Federal Government to discharge its obligations from the sources of revenue that will be accepted as common, surely there are other methods of giving them a sense of security as to the ability of the National Government to cope with the obligations that might legitimately fall on its shoulders. It cannot be done, in my humble opinion, through a Committee of this character.

When I agreed roughly to the sources of revenue to be common, I had in mind undoubtedly that I should be able to press for total repeal of the Salt tax, merely by way of instance; but I should not in any way bind myself even to the other taxes. I know that legally I do not do so; but if there is a recommendation on the part of the Committee, or if there are some calculations based upon the rigidity of the taxes that are enumerated there, I should again feel that I had not done justice to the cause that I represent.

Therefore, for these three reasons, I have very grave misgivings as to giving my consent to the appointment of this Committee and then finding myself debarred from raising objections of a fundamental character. So what really would please me, as representing the Congress, is that this matter might be left over entirely for the

National Government to investigate and decide. It should be enough just now for His Majesty's Government to know and feel absolutely reassured—and for that they are entitled to any assurances, legal or otherwise, that they may desire—but this delicate thing (to me it is a delicate thing) should be left over to the National Government. For these reasons, if this Committee wishes to express an opinion on the point now instantly, then I must press these objections of mine. Otherwise, in order that we may have an agreed settlement in this matter, I would suggest that the matter may be for the present left over, so that, by the time we approach the end of our labours, we shall all be in a better position to make up our minds.

Sir Samuel Hoare: Lord Chancellor, There are two observations that I should like to make in response to what Mr. Gandhi has just said. I say at once that I welcome the conciliatory spirit with which he seems this morning to have approached the question of our difficulties. The first observation I wish to make is in connection with what he said about the Conference coming to an end on November 10. I should not have made any comment upon that observation were it not for the fact that, in one of the newspapers to-day, there is a statement—which I dare say a good many members of the Committee have already seen—in which it is definitely said that His Majesty's Government have decided to break up the Round Table Conference and to bring it to an end in the second week in November. I should like to say, on behalf of His Majesty's Government, that there is not a word of truth in that statement. The Prime Minister himself is making a disclaimer in the Press in the course of the next hour or two; but I wish, upon this, the first occasion that I have, to tell my colleagues of this Committee that nothing is further from our mind. We are perfectly prepared to go on with the work of the Round Table Conference as long as you and we think that a useful purpose can be served by our deliberations. We have not the least intention of bringing it to a permature end. Therefore, any rumours about a particular date, such as those mentioned by Mr. Gandhi this morning, really, so far as His Majesty's Government are concerned, have no foundation whatever.

The next observation I should like to make is this. It seemed to me, listening to Mr. Gandhi just now, that he was anxious—and from his point of view naturally anxious—to state his misgivings, and to put in a caveat from the point of view of those whom he represents in India as to the procedure; but I did not gather from him that he definitely wished to oppose the compromise suggested by Lord Peel. I hope that that is so; and I do sincerely think that if, in expressing his misgivings, he will none the less allow the compromise to go through this morning, he is not in the least compromising his own position. The question that he raised—namely, the question as to whether the Federal Government should, in whole or in part, be responsible for the "Imperial" debt—is a question that seems to me to have nothing whatever to do with

the work of the two Committees that we are discussing now. That is a very big question, and he and I will be the first to admit it is a very controversial question; but I do suggest to him that it does not really come up upon the proposals of these two Committees that we are discussing this morning. I would therefore ask him not to press it at this stage. No doubt, a time will come during our discussions in which we must debate it; but I venture to suggest to him that this is not the stage, and that that proposal really has nothing whatever to do with these two Committees. I would therefore venture to reinforce what Lord Peel has just said—to express the hope that, now that we have reduced our points of difference to such a minimum, we should agree with the suggestions that he has made and accept the recommendations of the Finance sub-Committee upon that basis.

Mr. Jinnah: I just want to say one word. I want to understand one point. After the Committees have made their Reports, I understand that some proposals will be formulated by His Majesty's Government. I understood Lord Peel to use the expression "decisions will be taken," and then the interests concerned will be consulted, and the procedure by which they will be consulted will be announced later on. I did not quite see the force of the words "final decisions." If I am to understand this to be the meaning—that, after the Committees have reported, His Majesty's Government will formulate their proposals and consult the parties concerned before any final decision is taken, then I accept it.

Sir Samuel Hoare: I did not understand Lord Peel's use of the word "decisions" to mean anything final. What I did understand him to mean was that it would be the provisional conclusions of the Committee. Quite obviously they would not be final decisions.

Sir Tej Bahadur Sapru: So far as Lord Peel says that the principles set out in the Report must be accepted as a general basis, I have no exception to take. That has been my position all along. Coming, then, to the Expert Committee, I hope Lord Peel will correct me if I have wrongly understood him. I understood Lord Peel at the present moment to suggest that this Committee—call it by whatever name you like; Expert Committee or a Committee of Competent Persons, or anything you like—is going to work out the details in accordance with the recommendations contained in his Report. If that be his meaning, then I have no objection. But if what Lord Peel means is that this Committee should be also at liberty to replace any principles laid down by him in his Report or to vary any principles, then, frankly, I will not agree.

Lord Peel: May I interrupt for one moment? I think I did explain, did I not, that that was the very point I wanted to meet. We were trying to meet Sir Tej Bahadur Sapru's objection, and that was the reason for the close limitation set out in the powers of the Committee. It was all to meet you, Sir Tej.

Sir Tej Bahadur Sapru: Then I take it that what Your Lordship suggests now is that this fact-finding Committee will only find facts in accordance with the principles laid down in the Report?

Lord Peel: Yes.

Sir Tej Bahadur Sapru: Well, if that be so, I have no objection at all; but again I should like, like both Mr. Gandhi and Mr. Jinnah, to be satisfied in regard to the procedure that is to be adopted for coming to final decisions, because I take it, after the point was raised by Mr. Jinnah, that it was not intended to come to any decisions immediately after the Report has been submitted, but to arrive at tentative proposals, and that those tentative proposals will be laid before a Committee or before the whole Conference, or that you will devise some sort of machinery in order to arrive at final decisions. If that be the understanding, then I have no objection at all.

Mr. Gandhi: But it is clearly subject to the principles that Lord Peel himself adumbrated.

Sir Tej Bahadur Sapru: As regards the other Committee suggested by Lord Peel, I have no objection to that.

Chairman: I think the position now is that, thanks to the tact and good sense of the parties, we have arrived at a compromise which is a workable compromise; and we are very much indebted to Lord Peel and those who are associated with him for having brought us this happy result. I quite appreciate Mr. Gandhi's caveat, and that will appear in the record of the proceedings; and I also appreciate Dr. Ambedkar's caveat. That, however, does not prevent us at all from accepting this very helpful compromise. We have made a very long step forward towards our future work. We will report in that sense; and let me express, at any rate, my personal thanks and your personal thanks to Lord Peel and the sub-Committee.

(*The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.*)

Head 8.

The Federal Court—(continued).

Dr. Ambedkar: Lord Chancellor, It seems to me that, in considering the establishment of a Federal Court in India, there are three questions with which we are mainly concerned. The first question is the jurisdiction of the Federal Court; the second, the enforcement of the judgments and decisions of the Federal Court; and the third, the organisation of the Federal Court. I propose to offer a few remarks on each of these heads, and the first head that I propose to take for consideration is the jurisdiction of the Federal Court.

It is an accepted proposition that one of the functions of the Federal Court is to interpret the Federal Constitution. The distinguishing feature of a federal government, as contrasted with a

unitary system of government, is that there is, in a federal government, a division of functions which constitutes the essence of federation. There are two spheres, one allotted legally to the Federal Government and another allotted to the State or the Provincial Government; and the important thing in a Federation is to see that the one does not interfere in the sphere of the other. In order to see that, there is, of course, the evident necessity of a Federal Judicature which will keep the two governments restricted to the spheres allotted to them. That is one purpose for which a Federal Court is necessary. But it seems to me that there is also a second purpose which a Federal Court of Judicature must perform. The Federal Court of Judicature is also what may be called a Court of international justice. One of the objects which has led many national governments to form a federation is to see that disputes between different governments and different units which, before the formation of the federation, used to be decided by diplomacy, or by war, failing diplomacy, should be decided by judicial decisions of a Federal Court, to which they are all subject. That is the view taken by the Supreme Court of the United States of America itself; and, with your permission, I would just like to read a small paragraph from one of the judgments of the Supreme Court of the United States of America reported in *Louisiana* v. *Texas*, 176 U.S., page 21.

Chairman: What is the date of that?

Dr. Ambedkar: 1900. This is what Mr. Justice Brown said regarding the function of the Supreme Court:—

> "In view of the solicitude which, from time immemorial, States have manifested for the interests of their own citizens; of the fact that wars are frequently waged by States in vindication of individual rights, of which the last War of Independence, the Opium War of 1840 between Great Britain and China, and the war which is now being carried on in South Africa between Great Britain and the Transvaal Republic, are notable examples; of the further fact that treaties are entered into for the protection of individual rights, and that international tribunals are constantly being established for the settlement of rights of private parties—it would seem a strange anomaly if a State of this Union, which is prohibited by the Constitution from levying war upon another State, would not invoke the authority of this Court to raise an embargo which had been established by another State against its citizens and their property. An embargo, though not an act of war, is frequently resorted to as a preliminary to a declaration of war, and may be treated in certain instances as a sufficient *casus belli*."

He goes on further to point out that there are many cases which may arise under a federation which, in the event of the absence of federation, would be decided by diplomacy or war; and the Federal Judicature, therefore, in order to prevent such a catastrophe, must

make ample provision for a wide jurisdiction of the Federal Court which would enable it to give justice in all such cases. Taking that standpoint, Lord Chancellor, I think that the scheme which was adumbrated in the observations which you were kind enough to address to the Committee the other day, regarding the jurisdiction of the Federal Court, is somewhat inadequate, if you will pardon my saying so.

According to the observations which you made the other day, the judicial power is to extend to matters arising between Units of the Federation, State versus State, Province versus State, and the Commonwealth of India versus a State or a Province. I do not know whether the word " State " is used to refer to an incorporated body or to the State in its position of trustee, guardian or representative of the citizens. But, apart from that, it seems to me that the Federal Judicature must make provision for matters arising between one Unit and a citizen of another Unit. Take this case. Assume, that an Indian State, which becomes a Unit of the Federation, borrows money through the contemplated Loans Board in the open market. Assume, further, that a resident of the Province of Bombay subscribes to that loan; and assume that the State fails to meet its obligation. What is the remedy? Under the scheme, I do not see any provision made for the Federal Judicature to take due cognisance of a matter of this sort. Take another illustration. We have what are called the ceded territories in the possession of the British Government. The States are demanding that these ceded territories shall be returned; or, if they are not returned, certain compensation shall be given to them. Suppose that, in a ceded territory, the British Government has made a grant of land to a certain individual, and suppose that, after the rendition of the territory to the Indian State, the State Ruler also makes a grant of the same land to another individual. You have here a case where there is one subject matter of the same grant made by two different authorities to two different persons. What is the remedy for the adjudication of a dispute of this sort? Is the Federal Court going to take cognisance of it or not? Again, take the case of two persons between whom there is litigation, but who reside in different Units of the Federation. Which is the Court which is going to take cognisance of the case? These are some of the matters which, I find, are not provided for in the observations that you addressed to us the other day.

Comparing the constitution suggested in your scheme for a Federal Court in India with the jurisdiction of the Federal Courts in Australia and in the United States of America, I think the scheme entirely falls short of the necessities of a federal government. In Australia, under Section 75, the Australian High Court has jurisdiction in all matters (1) arising under any treaty, (2) affecting the consuls or other representatives of other countries, (3) in which the Commonwealth or a person suing or being sued on behalf of the Commonwealth is a party, (4) between States or between residents of different States, or between a State and resident of another

State, and (5) in which a writ of mandamus or prohibition or injunction is sought against an officer of the Commonwealth. According to Section 76, it can also have jurisdiction with regard to matters (1) arising under the constitution or involving its interpretation, (2) arising under any laws made by the Parliament, (3) of admiralty and maritime jurisdiction, and (4) relating to the same subject matter claimed under the laws of different States. Turning to the Constitution of the United States, Article 3 (2), the judicial power of the United States is said to extend (1) to all cases in law and equity arising under the constitution, the laws of the United States, treaties made or which shall be made under their authority; (2) to all causes affecting ambassadors or other public ministers and consuls; (3) to all cases of admiralty and maritime jurisdiction; (4) to controversies to which the United States shall be a party; (5) to controversies between two or more States; (6) to controversies between a State and a citizen of another State (which of course subsequently has been abrogated by the eleventh amendment of the constitution); (7) to controversies between citizens of different States; (8) to controversies between citizens of the same State claiming lands under grants of different States; and (9) to controversies between a State or the citizens thereof and foreign States' citizens or subjects. My submission therefore is that, if this Federal Court is going to be federal in the real sense of the word—that is to say, if it is going to cover all cases of dispute between Units of the Federation or between citizens of the different Units—then the list must be revised and must be brought into conformity with the federal jurisdiction that has been given in countries like Australia or the United States.

Now, the next point that I wish to submit, Lord Chancellor, is this—that, although India is going to be a federal country, yet India cannot be satisfied with the extent of jurisdiction which the Federal Courts in countries like Australia and the United States have at present. There are certain peculiar circumstances about India which do not obtain in those countries. Consequently, my submission is that the federal jurisdiction of the Federal Court in India must not only be in conformity with the federal jurisdiction of the Federal Courts in Australia and the United States, but it must have federal jurisdiction in matters relating to fundamental rights and the minority safeguards.

Chairman: Will you refer me to the fundamental rights clause in the U. S. A. Constitution?

Dr. Ambedkar: Yes, I will.

Chairman: Just tell me where it is, if you do not mind. I know it so well, but at the moment I cannot put my hand on it.

Dr. Ambedkar: I am sorry, I have not got it.

Chairman: I was thinking of the clause which began about the privileges and immunities of free citizens in the various States—about the people of each Province and State having free ingress and egress, and that sort of thing. However, we will not waste our

time because I cannot put my hand on it at the moment. Section 2 of Article IV is the one I was thinking of.

Dr. Ambedkar: My submission is this—that whatever may be the manner in which we define the fundamental rights, or whatever may be the manner in which we define minority rights, the important problem is to see that they are properly safeguarded. My reasons are these. The Federal Constitution which we are going to have is not going to be, with all the protests that some of us are making, a perfect Federation. We shall have probably a Federation between British India, with all the popular and representative institutions, and the Indian States with no popular and representative institutions in them. I am only imagining. Probably the result may be otherwise; and, if so, nobody will be more happy than myself. But we shall have this situation, namely, that of a federation between a democracy and an autocracy; and we shall have, as I say, within British India, a government not of political majorities, but a government in the main of communal majorities. My view, therefore, is that the question of the protection of fundamental rights, and the question of the protection of minority rights, assume far greater importance in India than it can assume in any other constitution; and the duty absolutely to guarantee the fundamental rights, whatever they are, and the minority rights, whatever they are, becomes paramount. The best way of doing this seems to me to be to endow the Federal Court with a jurisdiction to hear matters arising out of them. That is my submission. Everywhere, whether a question arises regarding fundamental rights or minority safeguards, whether in British India or in a Native State, the Federal Court must have jurisdiction to hear them.

Chairman: Would you include cases of commercial discrimination?

Dr. Ambedkar: Yes. If we all agree that it should be a fundamental right that there shall be no commercial discrimination, then it should come within the jurisdiction of the Federal Court. So much with regard to the jurisdiction of the Federal Court.

The next point that I wish to touch upon is with regard to the enforcement of the decisions of the Federal Court. The note which you have been kind enough to circulate, Lord Chancellor, does not suggest any legal measures for the enforcement of the decisions of the Federal Court. The matter, I understand, is to be left to the different States and to the different Provinces; and you rather give us the admonition that we must not distrust the *bonâ fides* of the Provinces or the States, and that we must assume that they will faithfully abide by the decisions of the Federal Court and give effect to them. Now, Lord Chancellor, I feel that we ought to follow the maxim which John Stuart Mill laid down, that if all men were good there would be no necessity for making laws; but that we are obliged to make laws because we know that certain people are bad. So I rather take the view that the matter should not be left in this undecided manner and I say this, that I am

strengthened in the attitude that I take up by the experience of the Supreme Court in the United States. If you will pardon me, I propose to draw the attention of the Committee to the history regarding the enforcement of the judgments of the Supreme Court. I should like first of all to draw your attention to the case of *Chisholm* v. *Georgia*, decided in 1793. The Supreme Court, under the federal jurisdiction which it had, granted a decree in favour of Mr. Chisholm for the recovery of a certain debt against the State of Georgia. But, as history shows, the State of Georgia rose in arms against the Supreme Court, and refused to honour the decree on the ground that it was an affront to a sovereign State; and the judgment of the United States Supreme Court remained in abeyance—it was not executed. So much so, that it was this attitude of the State of Georgia which led to the eleventh amendment, which took away the federal jurisdiction given to the Supreme Court of the United States as between a State and a citizen of another State. Another illustration is the case of *Virginia* v. *West Virginia*. After the Civil War there was a partition of the old State of Virginia into two States, Virginia and West Virginia. This occurred in 1861, and, as a part of this agreement, West Virginia agreed to pay a just proportion of the Public Debt incurred by the parent State prior to January 1st, 1861. This obligation was reaffirmed in the eighth article of the West Virginia Constitution. For forty years, Virginia did all in her power to induce, by friendly negotiation, West Virginia to settle the claim. All this proved unavailing, and, in 1906, Virginia took the matter to the Supreme Court of the United States. West Virginia proved most obstructive, and first of all refused to submit to the jurisdiction of the Supreme Court. It took objection from 1906 to 1911 merely to the jurisdiction of the Supreme Court. Then, when the Supreme Court decided that it had jurisdiction, the Supreme Court appointed a Master to go into the accounts and to prepare a report. A report was prepared, and then again West Virginia took some three years in challenging that report. After that she asked for time for her Legislature to consider whether the obligation should be honoured. That dragged matters on until 1913. Then she asked for time to file a supplementary written statement after the report had been made and objections overruled. In 1915, all methods of obstruction having failed, the Court pronounced judgment. For four years, West Virginia refused to look at the judgment, but in 1919 she was persuaded to honour the debt.

Mr. Jinnah: Assuming that difficulty to exist, what do you suggest?

Dr. Ambedkar: My suggestion is this. I must tell you that my feelings on the subject are really rather high; and I do say this, that for a long time to come there will be communalism and there will be provincialism, and I am not at all certain that, in all this turmoil of communalism, the judgments of the Supreme Court or the Federal Court—whichever you like to call it—are not likely to be flouted. As a member speaking for a minority, and as a

member speaking for a minority which at present has no rights and which is claiming rights and which meets with opposition in every centre. I am not at all certain that a Provincial Government, backed by a communal majority in the Council, will readily consent to give effect to judgments and to decrees which may not be palatable to its own interests. That is my position. I take a very serious view of the matter, and I do say that. Therefore, My Lord, I would suggest that we ought to make provision in the constitution that judgments and decisions of the Supreme Court shall have effect given to them, and I suggest that we should follow and adopt the provisions that are entered in the Australian Constitution. First of all, sections 118 and 51, paragraph 25, of the Australian Constitution provide, of course, that faith and credit shall be given to all laws. That of course is nothing. It is found also in the Constitution of the United States. Then, with regard to the execution of decrees, you have in the Australian Constitution, under paragraph 34, power given to the Federal Legislature to legislate about matters which are incidental to other powers which are given to it. Then you have certain specific powers given in the Australian Constitution to the Central Government, for the enforcement of decrees and decisions. There is first of all Section 51, Paragraph 24, whereby provision is made for inter-State service and execution of judgments as between States, the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the Courts of the States. That is one thing. Then you have Section 78 in the Australian Constitution—

Chairman: " The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power."

Dr. Ambedkar: Yes, that is one; and as Your Lordship knows, by the Judicature Act, 1903, Part 9, the Federal Legislature in Australia has made definite provision as to how judgments and decrees shall be executed against the States. Then you have Section 120 of the Australian Constitution—

> " Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effect to this provision."

I therefore submit that some specific power ought to be conferred upon the Federal Legislature whereby it can enforce the decisions of the Federal Court.

Chairman: What sort of sanction are you thinking of?

Dr. Ambedkar: I do not know what they would do; but my submission is that the matter should not be left hanging in the air in this fashion. I was going to show Your Lordship, from

certain extracts I have made, that judgments of the Supreme Court of the United States have been absolutely worthless by reason of the fact that they were obsessed by the fact that their judgments may not be executed but may be flouted. In one case, for instance, in the case of a Governor of Ohio State, they did make an order that a certain fugitive offender who had gone into the State of Ohio should be delivered by the Governor. The Governor refused to do so. Then the State of Kentucky asked for a writ of mandamus. The Court said: The Constitution does not give us power to execute our judgment; therefore we shall not give a writ of mandamus. That was so, although they had given a decision that the Governor was bound to deliver the fugitive. I could cite hundreds of cases in which the Supreme Court of the United States has refused to give relief simply because it was oppressed by the feeling that its judgments might not be enforced. Unless we have some sort of provision of this sort, I cannot see how the situation will be rendered safe.

Chairman: What sort of legislation? Are you suggesting, for instance, that, if judgment was given against Bengal, you should put a bailiff into Bengal in some way?

Dr. Ambedkar: I mean what I find in Section 78, that in the execution of civil decrees the Treasurer or the person who is in charge of the Treasury shall be bound to pay.

Chairman: Supposing he does not, what happens?

Dr. Ambedkar: I suppose they will haul him up for contempt.

Sir Maneckjee Dadabhoy: Where will he be tried?

Dr. Ambedkar: By the Federal Court, wherever it states.

Mr. Iyengar: Who is to execute the warrant of contempt?

Dr. Ambedkar: The Federal Government, by its own officers. I want the Federal Government to have that power. This was one of the implied powers in the United States; and under Section 120 of the Australian Constitution, the Federal Government has the power to detain offenders against the federal law. Supposing a federal law was passed and a certain citizen of a State abrogated it and the Supreme Court passed judgment against him, and the feeling of the State was so great that they would not keep the man in jail, I suppose, under the power given in section 120, the Federal Government would have its own prisons. If the Federal Government is to see that justice is done in all matters, it must have the power to see that judgments are executed. How it will do that is a matter beyond me to say now. All I say is that power should be given in the constitution to the Federal Government to see that judgments and decisions are made effective throughout India. It is not necessary for me to repeat that, if the remedy fails, the right also fails.

Mr. Jayakar: If a state of racial or communal warfare should prevail, no remedy can be devised which may not become futile.

Dr. Ambedkar: It is not for me to answer that. I will take my own case. Suppose, in the Bombay Presidency, we have a Nasik Satyagraha, and suppose we have a fundamental right, which I claim in the first part of this Memorandum which I have submitted, namely, the right to enter the temple. Suppose the magistrate passes an order saying that we are creating a breach of the peace, and that, unless we desist from doing it, we shall be imprisoned. Suppose we go to the Federal Court under the jurisdiction which I say the Federal Court ought to have, and the Federal Court says that the magistrate was wrong. Suppose we come back to the Home Member for the execution of the order. The Home Member, if he is dependent on the majority of the orthodox people, will say "I cannot do it." I want the Central Government to have some power to make its laws effective under such conditions.

Mr. Jinnah: I think there is a great deal of force in what you are saying—that in order to execute a decree or a warrant it must be backed up in the first instance by the Police, and, in the second instance, the final authority is the Military. How would you expect the member of your Federal Government in charge to execute that decree or warrant unless he had resort to the Military?

Dr. Ambedkar: He may have. I am not putting any limitation upon him. I would give him the power that he thinks will be necessary for the purpose. It may come to that. I do not deny it; but what I say is this, that if you want to make sure of the protection of the people under the fundamental rights or under the minority rights, whatever they are, then I say the power must be vested, and for all purposes I say that the power must be vested in the Federal Government, to see that the decisions of the Federal Court are executed.

Mr. Jinnah: It is not only that the power should be invested, but there must be an instrument in their hands to enforce that power.

Dr. Ambedkar: Under this they will have the instrument.

Mr. Jinnah: Power may be vested in the Federal Government, but that power can only be enforced if you have the instrument to enforce it.

Dr. Ambedkar: The Army.

Mr. Jinnah: Quite right; and therefore what the Lord Chancellor has suggested is—and I think you have omitted to take notice of that—that, in the last resort, it will be the Crown who will be responsible for the enforcement of decrees and orders of the Federal Court. And it is stated there that the Crown will be responsible, because I understand up to the present moment that the position is this, that Defence is going to be a Crown subject. Am I right, Lord Chancellor?

Chairman: Yes. That is the point.

Dr. Ambedkar: But the point I am making is this, that if you are dividing functions between the Federal Government on the one

hand and the Provincial Government on the other hand, then if you do not give the Federal Government the power, legislative or otherwise, to give effect to the decisions of the Supreme Court, it would not be able to do it. That is my submission.

Mr. Jayakar: But, at the same time, the difficulty will not end there. I mean, in the state of communal feeling which you are imagining, the difficulty will not end there.

Dr. Ambedkar: I quite agree that far more drastic measures will probably have to be adopted, and, as we know, in the Swiss Confederation even the military is used—at least, the power is given to the Swiss Federal Government to use the military for enforcing the judgment of the Federal Court in Switzerland. I do not wish to prescribe what means should be adopted, but what I say is this. The difficulty which arose in the United States, that the Federal Government had no power.

Chairman: I quite follow. Therefore, they would not take responsibility.

Dr. Ambedkar: Yes. That ought not to be the situation in India.

Lord Lothian: Is not there this distinction in America—that the Federal authority is able to proceed as long as it is against an individual; but this very question came up in the Convention, and they decided that the Federal Government could not proceed against a State, because one State can only proceed against another by an act of war, and they, therefore, did leave it to the good sense of the community to bring pressure on the State to fulfil the obligations. You can provide up to a certain point in dealing with the individual, but you cannot provide within a Federation for the proceeding of the Federal Government against a State Government except by embodying an act of war as part of your constitutional procedure; and that nobody will do. That is your difficulty.

Dr. Ambedkar: Well, I do not know; but, as I say, in the United States also the President has the power to use the military for suppressing rebellion.

Lord Lothian: And that becomes an act of war, and that has happened in the past.

Dr. Ambedkar: That provision is embodied in the United States Constitution.

Mr. Jayakar: But, surely, the choice will lie between civil war and federal loyalty?

Dr. Ambedkar: That I perfectly realise. I am not denying the point that you are making. What I say is this, that we should not have the position that we have in the United States—that although there is a Federal Court there for the purpose of deciding disputes arising out of federal jurisdiction, there is no power in the Federal Government to make those decisions effective. What I mean is that our Federal Government or Federal Legislature should have such a power in the way in which the Australian has it.

Mr. Jinnah: The distinction is this, that in the United States the Federal Government is in charge and control of the military. You assume that your Federal Government which you are proposing should take over the control and responsibility for the military at once.

Dr. Ambedkar: Well, if not now, later on.

Mr. Jinnah: What is to happen in the meantime?

Dr. Ambedkar: As I said, that is another matter. The necessity for the employment of the military may not arise.

Mr. Jayakar: You will have to go to the Crown to ask for military help.

Dr. Ambedkar: Yes.

Mr. Jayakar: The Crown is the ultimate military authority.

Dr. Ambedkar: I do not think that takes away the point that I am making. The power ought to be given to the Federal Legislature. In the United States of America, people have been hanged by the States, although a writ of error has been issued by the Supreme Court.

Chairman: I have heard it said, with regard to English Common Law, that it is no use pulling up a plant repeatedly to have a look at the roots and to see whether it is growing. English Common Law will not stand that sort of thing, and you will find that no code of law will. You are putting very interesting legal conundrums; but the short answer is that anybody can make a thing unworkable, and it is no good always diving into the foundations to see if the foundations are all right. You must trust a good deal to the good sense of the people. It took about nineteen years in the Virginia case for people to come to a proper view. You may find that that may happen in your case. There may be these difficulties at first; but when you begin to work together, you will find a great many of them disappear. You cannot dig down to the foundations of your house every three weeks to see whether they are in order. You must trust people a little.

Dr. Ambedkar: My only reply is that we must see we do not lay our foundations on sand.

Coming to the third part of the subject, namely, the organisation of the Federal Court, I do not really want to say much on this because I agree with a great deal that has already been said. I should like, however, to make one observation, namely, that we should follow in this matter the Australian model, in so far as by that we should not only be able to get a Federal Court of Appeal for federal matters, but also a Supreme Court of Appeal for India as a whole, as they have done in Australia, whereby the Federal Court not only hears appeals from Courts which exercise federal jurisdiction, but also hears appeals from Courts in matters which are outside the federal jurisdiction.

I would particularly point out that the Federal Legislature of India should be left free to invest the Courts in Indian States with federal jurisdiction, so that it may be able to utilise the agency of the State Courts in the Indian States. Federal jurisdiction should not be delegated merely to the High Courts of the Provinces, but certain selected State Courts, which to the knowledge of the Federal Legislature are functioning efficiently, may also be selected as agencies for the exercise of federal jurisdiction in certain matters. The result of that, I think, will be very important. It will first of all raise the dignity of the State Courts; and, secondly, it will link up the State Courts with the whole judicial system in India, and will make our Federation a real Federation.

Mr. Jayakar: An appeal must like to the Supreme Court, the Federal Court?

Dr. Ambedkar: I am coming to that. In that connection, what I would suggest is that the State Courts should consent to send their appeals to the Federal Supreme Court even in matters not affecting federal jurisdiction. If they do not, I suggest that we should keep the same open-door policy which has been adopted in the Australian Constitution. In the Australian Constitution, provision is made that the Federal Court or the High Court of Australia shall not be prevented from hearing appeals from the States' Courts. I would like to have that provision introduced into our constitution. Further, although we may not make it obligatory upon the States' Courts to send their appeals to the Federal Court, we should prevent the Federal High Court from hearing appeals in case the States subsequently decide to give appellate jurisdiction to the Federal Court from their decisions. As I say, I would again follow the model of the Australian Constitution by giving to the States the right to regulate the right of appeal from their Courts to the Federal Courts. They may not give the same rights of appeal as there may be from British Provinces; they may regulate it if they like.

Then, there is just one thing I would like to say. That is with regard to the relation of the High Court to the Federal Government. At present the Indian High Courts are Provincial both for finance and for administration, except the High Court of Calcutta, which is, of course, Provincial for finance but Central for administration. Sir Tej Bahadur Sapru yesterday made the suggestion that the Indian High Courts should be Central for administration in all Provinces, and for financial purposes should be Provincial. As regards the suggestion by Sir Tej Bahadur Sapru that they should be Central for administration, I entirely agree with him; but my reasons are somewhat different, and I should like to state them. He said there was a certain amount of nervousness on the part of Judges of the Indian Provinces that they are likely to be subjected to local political pressure, and that they would, therefore, like to be lifted from the local politics to the control of the Federal Central Government. Now, I do not think the High Courts in any country,

for the matter of that, where there is representative democracy and responsible Government can be free from the influence of politics or the influence of party politicians.

Sir Tej Bahadur Sapru: I thought the theory of the law is that the English Courts are outside party politics.

Dr. Ambedkar: There are certain judicial posts in this country which are looked upon as political appointments, but that is another matter. Now, the consideration I would like to place before this Committee is this. We are admitting to this Federation some 562 Indian States.

Mr. Jinnah: Are we?

Dr. Ambedkar: I suppose that is the scheme; at least that is the ideal we have placed before ourselves, that all the Native States will come into this Federation. I think there is no dispute on this point, that a great many of the States, which will be part of the Indian Federation, are financially not strong enough to maintain a competent judiciary. I know of a case in the Bombay Presidency —I am citing a case with which I am acquainted. In Bombay there is a small Native State, the administration of which is run by a lady. In that State, so far as I know, there is only one officer. He acts as a Civil Judge; he also acts as a Magistrate; he also acts as a Sessions Judge. From him appeals go to the head of the State, and she is helped by the Diwan who is, so far as I know, a retired revenue official. Most complicated cases come before this tribunal, which is called, so to say, the Privy Council of that State; and judgments are being given to-day by a Court so constituted. Now, I do not blame anybody for that. The point is that such a State is so small that it simply has not got sufficient revenue to maintain a competent Court.

Then there is another consideration, namely, that we may, even with respect to British India, go on creating new Provinces so small that they, again, may not be in a position to maintain, financially speaking, a High Court. The case happens even to-day. The Province of Assam cannot maintain a High Court. It shares a High Court with the Presidency of Bengal. My submission is this —that if we can improve matters in such a way as to help all these Native States which are small and financially weak to maintain a proper judiciary by allowing them to utilise these High Courts which are now functioning in British India for the purpose of administering civil and criminal justice among their subjects, such a plan ought to be welcome. The fact is that, so long as a Provincial High Court is being entirely controlled by a Provincial Government, the States, which have no share in the control of the affairs of the Province, will not care to use the services of the High Court. If, on the other hand, the Provincial High Courts were made a Central subject, where all these States would undoubtedly be represented either directly or indirectly, then there would be more inducement—certainly much less objection on their part—to utilise these High Courts for the purpose of adjudication of civil

and criminal disputes among their subjects. The result would be that we would considerably improve the judicial administration in the Native States, which are going to be a part of the future Government of India, without in any sense impairing the efficiency of the Provincial High Courts. On that ground, I suggest that the Provincial High Courts may, for the purposes of administration and also for purposes of finance, be made a Central subject. One of the reasons why the High Court of Calcutta is Central for administration is because it is not a Court exclusively for the Presidency of Bengal. It is a Court which is a joint Court for the Presidency of Bengal and for the Province of Assam. It was for this reason that the Simon Commission recommended that the system should continue and be extended to other Provinces. That is the reason why I think this suggestion ought to be welcome.

That is all I have to say on this subject of the Federal Court.

Sir Provash Chunder Mitter: The question has been so fully debated that I propose to confine my remarks to fifteen or twenty minutes, and to deal with those questions which either have not been touched upon or which I do not agree. I will go at once to the question of the functions of that Federal Court. It has already been said that all constitutional questions—for example, the question of interpretation between conflicting statutes passed by different Legislatures, or whether a Bill is *ultra vires*, and so on—should be subject-matters mainly for the Federal Court. It has also been said that all justiciable questions affecting fundamental rights should be such a subject-matter. In this connection, I would suggest that a list of topics might be drawn up, divided into justiciable and non-justiciable; and I think a model for this is to be found in many existing federal constitutions. If we start by having such a list, I think we shall be doing the proper thing. I will not go into details now. Then there is the question relating to safeguards in the constitution for minorities. That I consider to be very important, and I desire to lay stress on that. I am sure it will allay the apprehension of the minorities if a separate list is prepared with regard to their safeguards. Then I desire to suggest, provided the States agree, that questions of interpretation of agreements between the States should be a subject-matter; but this I would make only an enabling clause. I desire to suggest that, with regard to certain matters, powers may be given in the form of an enabling clause, quite apart from powers of a different character. One of these enabling powers may well be this. Supposing there is a dispute between two States, or between a State and a Province, if the State and the Province agree, it may well be referred to the Federal Court instead of appointing a commission, or dealing with the matter *ad hoc*. That is the suggestion I desire to throw out. Another suggestion, which may well be covered by an enabling clause, and is a suggestion which has wide implications, is this. In cases where there is a dispute between the two Units of the Federation, these disputes, if the Units so desire, may be settled by a decision of the Federal Court in cases where, if these were

disputes between individual citizens, the ordinary Municipal Courts would have decided them. Some of the previous speakers have referred to boundary disputes. I would not make boundary disputes a compulsory matter for decision, but I suggest that, where there is a boundary dispute, then, instead of a commission *ad hoc*, whether the dispute is between a British Indian Province and an Indian State, or between two Indian States it might, if they so desire, be referred to the Federal Court for decision. My suggestion, therefore, is that some powers may be obligatory and other powers may be merely of an enabling character, the latter to be utilised if the parties agree to a reference.

Then, with regard to functions, it is stated that there should be both appellate and original functions, and I agree. The appellate functions, I suggest, should also be exercised when a constitutional issue arises in any ordinary Court in ordinary litigation. Where, in private litigation, a question arises which has a constitutional aspect, then one of two things may be done. The Judge trying the case, if he thinks the question is of sufficient importance, may make a reference, just as in our Civil Procedure Code there are powers of reference by inferior Courts to superior Courts. In many cases, on the other hand, it will be undesirable to hold up the decision of the case; and in such cases, the ordinary civil Court will go on and give its decision; but it will be open for the parties affected to go to the Federal Court. Another suggestion, which could also be dealt with by means of an enabling clause, concerns the advisory functions to which some of the previous speakers have referred—advisory functions on the lines of section 4 of the Privy Council Act of 1833. Some previous speakers have referred to the fact that the Governor-General now exercises rights of paramountcy, *i.e.*, interpretation of Treaties, and so on, on the advice of the Political Department, and therefore an advisory function may be given to the Supreme Court; but my esteemed friend, Sir Mirza Ismail, has more or less objected to it, if I understood him aright. There could be no objection, however, to an enabling provision. Some States may object to the advisory function and others may not; and after a certain number of advisory opinions have been given, perhaps States will be more ready to take advantage of this provision. I do not, however, want to force anything on the Indian States; but I see no harm in having an enabling provision of this nature.

The point has been raised as to the time at which the jurisdiction of the Federal Court should come into operation in the case of Bills or Statutes. Here, I am sorry to say, I absolutely disagree with my esteemed friend, Sir Muhammad Shafi. When a Bill is before the Legislative Council, it might, according to his suggestion, be open to persons or a community affected to hold up the passage of that Bill, and in that case a number of individuals could often hold up Bills in which really no communal or minority question is involved. At the same time, I entirely agree with his point of substance, namely, that if there is a real question which affects a

minority or community, that minority or that community should have every right, and, indeed, should have every facility,, to have the matter properly adjudicated upon. I see no reason, however, why that should take place before the Bill is passed. The minority or community affected is not hurt before the Bill has actually passed into law. Why cry before you are hurt? The balance of convenience is certainly in favour of waiting until the measure has not only been passed but has received the necessary assent. After it has received the necessary assent, the matter can be gone into by the community or minority affected; and I suggest that, at that stage, the question may arise in two ways, and may be taken before the Court in two ways. In the first place, we may have a procedure similar to that with which we are familiar in the civil Courts, namely, of relators instituting a suit for the public interest in the case of a public trust, public rights of way and so on. Representatives of the minority or the community concerned ought to be able to bring that matter before the Federal Court, acting on behalf of the community. Secondly, the question may arise in ordinary private litigation between two persons, and there another important point comes in. The cause of action in private litigation may arise fifty years after the Statute was passed; and if, at that particular point of time, the question is taken before the Federal Court and a decision is given one way or the other, what will happen if a decision is given to the effect that the particular Act in question is *ultra vires*? Many transactions might be upset; and that would be hardly fair, and may lead to many complications and difficulties. There may, however, be a compromise. Suppose we have a definite period of one year or two years, or whatever it may be—a reasonably short period—within which such cases or such points may be raised. We would then see that no difficulty will arise, provided the individuals who act as relators do so within the short period prescribed. Where the question arises in private litigation, the ordinary Municipal Court would decide the matter and the same time-limit would apply so far as constitutional issue is concerned. If the matter arises within a period of one to three years—whatever period is determined—the Federal Court will have the power to take it up, but if it arises long after—say fifty years—then the matter cannot be taken to the Federal Court. In other words, you fix a reasonably short period within which the decision of the Federal Court will affect questions of constitutional principle; but, beyond that time, the Federal Court will not take cognisance of the matter. Now, it may be said that, if that legislation is of a character that it should never have been allowed to have been passed, if it is fundamentally void, if it is fundamentally *ultra vires*, then, by the mere lapse of time and by mere prescription, it will not become good legislation. But we in this world are concerned with realities. If the balance of convenience lies in fixing a time-limit, I for one do not see that we should pursue theories and should upset hundreds and perhaps thousands of transactions entered into by individuals during the long time when the legislation was not questioned.

Mr. Jayakar: That may be prevented by a Validating Act.

Sir Provash Chunder Mitter: I thank you for the interruption. If there are thousands of cases, after a lapse of years how will a Validating Act put things right? And if your original Act is *ultra vires*, your Validating Act will also be *ultra vires*.

Mr. Jayakar: The Act would not be validated; the transactions would be validated.

Sir Provash Chunder Mitter: If your transactions are validated, you will in substance be guilty of the same degree of illegality. I suggest, Sir, that perhaps one year ought to be sufficient; but I am not wedded to any definite time. In my opinion it certainly ought not to be more than three years.

Now, with regard to a point raised by Mrs. Subbarayan, namely, that social legislation may be held up, I entirely support that point, so far as interference by the Federal Court in pending Bills is concerned. But I do not agree with her as to no power being given either to the President or to the Governor or the Governor-General. I do not agree for this reason, that, although I am as keen as anybody as to the early passing into law of certain social legislation, at the same time I realise that the more we can carry the community with us the better. There is, of course, one section of the community which we can never hope to carry with us; but I am glad to say that public opinion is gradually improving. Acts which have recently been passed—the very Acts to which Mrs. Subbarayan has referred—could not have been passed twenty years ago. They were passed by the good sense of the majority in the house. Therefore, if you give certain powers—and I am prepared to concede that those powers must be very limited—to the Governor or the Governor-General, then the Governor or Governor-General will find out the views of the better mind of the community.

Now, My Lord, I will say a few words about the appointment of the Judges of the Federal Court or Supreme Court, as you may choose to call it. In my judgment, the Governor-General should be the appointing authority, in consultation with a panel of Chief Justices. I say panel of Chief Justices for a particular reason—because I hope the object is to get the best possible Judges. Therefore, Judges may have to be secured from different parts of India. From that point of view, the advice of Chief Justices of different parts of India may be valuable. On the other hand, there is much to be said for the appointment being practically left to the Chief Justice of the Supreme Court. I have no objection to that, provided the convention be that that Chief Justice will try to find out—as I hope he will—lawyers from different parts of India. But technically the appointment will no doubt be an appointment by the Crown. As regards Judges recruited in India, whether it be left to the Governor-General acting in consultation with different Chief Justices, or whether it be left to the Governor-General acting in consultation with the Chief Justice of the Federal Court, the understanding being that every attempt

will be made to get the possible men throughout India, it will serve my purpose. But, when the appointment is by direct recruitment from this country, my suggestion is that the Governor-General or the Chief Justice, as the case may be, should act in consultation with the Lord Chancellor for the time being. Whoever that Lord Chancellor may be, he will, I hope, look to the best interests of the Federal Court. Very good British Judges have been sent out from this country; but, on other occasions, I am sorry to say, in the appointment there appears to have been more exercise of personal patronage.

With regard to execution, I did not originally want to say anything, because all that needed to be said was said; but I think my friend Dr. Ambedkar, in his anxiety, has tried to carry the point too far. I am thoroughly opposed to taking military help to enforce judgments of the Federal Court. I would leave it to the good sense of the community.

Dr. Ambedkar: I have not said that; I simply said "give powers."

Sir Provash Chunder Mitter: You said "give powers"; but when the question was put to you by Mr. Jinnah, you would not say what the powers would be. So long as they leave it to the Crown, and so long as in the intermediate period the Crown comes in, I think we may leave it there. The good sense of the community is the best remedy.

That is all I have got to say on the question of the Federal Court exercising purely federal functions; but the question has been raised as to whether the Federal Court should also be a Court of Appeal, not only in civil matters, but also in criminal matters. I will take up the criminal side of it first. I am emphatically of opinion that, if you try to give an appeal in criminal matters, then the whole thing will break down of its own weight. I think you will require very many Judges if you allow a criminal appeal. If we take the Province of the Punjab, from facts we have I suppose it will require about six Judges for the Punjab alone.

Dr. Shafa'at Ahmad Khan: And Bengal?

Sir Provash Chunder Mitter: Unfortunately for the lawyers, crime is not half so bad as in some of the other Provinces. In criminal matters, is a right of appeal very necessary? In trials by juries, the jury decides the facts; and unless there be misdirection or an error of law, an appeal is not ordinarily very necessary. Whether trial by jury is fundamentally a good system or not, I do not want to express an opinion; but we in India are gradually extending trial by jury. When there is trial by jury no question of fact ought to arise on appeal. In criminal cases, there is also the other side of the picture. I appreciate that, if a man is sentenced to be hanged, a second opinion to stop the hanging may be a very good thing; but there is also such a thing as prolonged agony, and experience of the world shows that in criminal cases a speedy disposal of the matter is desirable. After all, there is a prerogative of

mercy with the Crown or with the Home Member. Therefore, I am absolutely opposed to giving a right of appeal in criminal matters to the Supreme Court. I am all the more opposed to it, because if you give a right of appeal in criminal matters, then you will never get a Supreme Court in India, and it is undoubtedly the ambition of the lawyers in India to have a Supreme Court. It is also the natural ambition of Indian public men that we should be masters in our own house. There are lawyers in India to-day who can deal with their law quite as well as anybody.

Mr. Joshi: The Code exists for the people and not for the lawyers.

Sir Provash Chunder Mitter: And the lawyers exist for the people. Judges also exist for the people, and Judges have got to be recruited from lawyers.

With regard to civil litigation, although I have no fundamental objection to the final Appellate Court being in India, I am not sure whether it would be wise to start with an Appellate Court in India, and to get rid of the Judicial Committee at once. My opinion will depend upon a further investigation of the facts. Sir Sultan Ahmed pointed out that the total number of Privy Council appeals in 1928 was 91; in 1929 it was 122, and in 1930 it was 77. My friend, Sir Tej Bahadur Sapru's estimate was 250 for the Supreme Court in India. Without going into details, my personal estimate is in the region of 700, if not more, and I will indicate the reason why I think that will be the number. I think that, with the proximity of the Court, with the cheapening of litigation, and with the tendency of litigants to go to a higher Court, the number will increase very much. Another reason of a practical nature is this. Even if there be a compromise between Mahatma Gandhi's ideas on the subject and Sir Tej Bahadur Sapru's ideas, I do not think that the salaries which it may be possible for the Federal Government to allow to Judges of the Supreme Court will be so attractive as to induce some of our best lawyers to accept these judgeships. There is another point. I would welcome appeals from civil litigation; and if, on further investigation, we are satisfied that there will be a sufficient number of good Judges to deal with the cases, and that the number of litigants will not be very high so as to affect the efficiency of the Court, then let the jurisdiction regarding civil appeals be given to the Supreme Court from the very beginning. If investigation proves the existence of practical difficulties, then this particular jurisdiction may be given, say, ten or fifteen years later; but I certainly welcome the idea of having, sooner or later, a Court of final appeal in India for civil cases.

In this connection, we cannot overlook the attitude of the Indian States, to which Sir Mirza Ismail has given expression. No doubt, it may be quite possible to have civil appeals only from British India; but, for the sake of having Federation, under the peculiar conditions of India, we are going to give the go-by to many fundamental ideals of federation. I am not objecting to that; in fact I

welcome it. Unless it is very necessary, however, why should we give the go-by to another of the essentials of federation? As Your Lordship said the other day, very soon, whether of Federation even the " F " will be left is doubtful. That is an aspect of the question which must be taken into consideration.

As regards location, I am sorry to say I do not agree with Sir Muhammad Shafi that Delhi is the most suitable place. I would favour a more central place and a place with other advantages, like Allahabad or Lucknow.

Sir Tej Bahadur Sapru: I certainly support that!

Sir Provash Chunder Mitter: I am neither an Allahabad man nor a Lucknow man, but I am looking at the question from the point of view of India as a whole and the amenities of those places. They are fairly central. Good lawyers are available there, and there are libraries and other facilities. Also, it may be possible for lawyers and Judges to work for a much longer period than might be possible at Delhi.

Mr. Zafrullah Khan: Allahabad is much hotter than Delhi.

Sir Provash Chunder Mitter: Bombay, Calcutta or Madras would be ideal from various other points of view, but they are not so central; and, if you want to have a central place and a fairly efficient one, I think you should choose Allahabad or Lucknow, though if you are looking for efficiency alone, you should select Bombay, Calcutta or Madras.

H.H. The Nawab of Bhopal: If you want a central place, then I would suggest that Central India is the proper place!

Sir Provash Chunder Mitter: There is no High Court in Central India, I think, of the type of some of our Provincial High Courts, with perhaps thirty lawyers possessing big libraries. I do not think you have that in Bhopal, though I do not know that State well.

(The Committee adjourned at 4-10 p.m.)

PROCEEDINGS OF THE FORTIETH MEETING OF THE FEDERAL STRUCTURE COMMITTEE, HELD ON THE 23RD OCTOBER, 1931, AT 11-0 A.M.

HEAD 8.

The Federal Court—(continued).

Sir Provash Chunder Mitter: Yesterday we were dealing with the question of the Federal Court's taking up civil appeals. I gave a figure of 700 appeals as a possible estimate. I did not give any materials on which I based my estimate, because I was anxious to finish before the Committee rose in the afternoon. As it is a question of importance, and as my estimate differs from other estimates made by eminent lawyers, I think I will just say one or two

words as to why I came to that estimate. My estimate is naturally based, in the first instance, on my experience in my own Province, Bengal. Before Bihar had a separate High Court, I had considerable experience of Bihar and Orissa. In Bengal, after the establishment of a separate High Court in Patna, we have roughly about 400 first appeals, *i.e.*, appeals from suits of the value of Rs. 5,000 and upwards. It is known to lawyers that, in many cases, suits are valued on an under-estimate in order to lower the stamp fee, and also because the pleaders in the first Court often like to appear not only in the original suit but also in the appeal in the district. It has sometimes been our experience that in regard to a suit which has been valued, say, at six thousand rupees, when it comes to filing an appeal before the Privy Council, affidavits are put in showing the real value. Therefore, as regards first appeals, I would estimate 150 to 200 as Bengal's contribution alone. I agree with Sir Tej Bahadur Sapru's estimate that, in roughly two-thirds of the cases, the judgments are judgments of affirmation. So that, in about one-third of the cases, the judgments are judgments reversing the original decision. As regards judgments where the decision of the first Court is affirmed, in many cases questions of law do arise. In other cases questions of law do not arise, and no doubt in such cases the High Court would not grant leave. But I believe it is our experience that there are litigants who are persistent and who try to get special leave—often unsuccessfully. There is also another class of case, where the decision involves some question which affects property of a particular nature. The class of case where such questions arise is comparatively rare. Even in second appeals, as we know, in a certain percentage of cases the appealable value is made out. Now, taking all these factors into consideration—first of all, the number of first appeals is 400; the number of what we call appeals from orders, miscellaneous appeals, we will say, is about 1,500 to 1,800.

Chairman: Do you mean what we call interlocutory appeals?

Sir Provash Chunder Mitter: Yes, but there are interlocutory orders of a certain type where, on that particular point, the judgment is final and where an appeal is allowed. The percentage, however, will be very small, because in many ordinary interlocutory appeals no appeal will be allowed. Then, in execution cases, under what we call Section 47, the decision has the force of a decree; and in our High Court those cases are classed as miscellaneous appeals. In such cases one can appeal as a matter of right, where there is a final decision in execution cases where the rights of parties are adjudicated upon. So that, out of the 1,500 to 1,800 miscellaneous appeals, I do not estimate more than 75 or 100. Then, in regard to second appeals, the total number is about 3,000, but the value is below Rs. 5,000. Some of these second appeals will go up to the Federal Court, either because an appealable value is made out, or because of the nature and importance of the question involved. There is a well-known case where the point about the principle of decision in second appeals was laid down by the Privy

Council. Of course, all this is nothing more than an estimate. Coupled with that we must take into consideration the fact that, when the appellate Court is located in India, the expenses will be very much less. Taking all these things into consideration, I think my Province will contribute about 200.

Sir Sultan Ahmed: What is your estimate of the number of appeals to the Privy Council from your Court?

Sir Provash Chunder Mitter: I do not think it will be more than 20 or 25.

Sir Sultan Ahmed: From 20 you raise it to 200.

Sir Provash Chunder Mitter: I have given my reasons. I do not think that anyone can assert that it will be 700 or more, nor can anyone assert that it will be 250 or less.

Sir Tej Bahadur Sapru: Will your Lordship allow me just to make a short statement, so that Sir Provash may consider that matter? That matter has not been brought to Your Lordship's notice. In the year 1924, the Government of India appointed a Committee, which is generally known as the Civilian Justice Committee. Sir George Rankin, the Chief Justice of the Calcutta High Court, was the Chairman of that Committee, and I happened to serve on that Committee also. One of the recommendations of that Committee was that the Provincial Governments should appoint Division Benches of Subordinate Judges or District Judges in the districts. These Division Benches were supposed to hear important appeals from Courts of original jurisdiction in the districts. Well, if this system could be accepted, there would naturally be a reduction of appeals to the High Court. All of us were agreed that that was the soundest thing to do—I mean, the members of the Committee were of that opinion. Unfortunately, that scheme has been held up in the Various Provincial Governments on account of financial difficulties, so I anticipate that the Legislature of the future will have to deal effectively with this question of appeals—either to give effect to the recommendations of the Rankin Committee or to take some similar steps; and therefore I do not anticipate that, if you have a Supreme Court in India hearing appeals from the Provincial High Courts, the number will be anything more than 200 to 250. With proper revision of our law in regard to appeals, I think we can keep it within reasonable limits.

Sir Sultan Ahmed: Undoubtedly.

Sir Tej Bahadur Sapru: Sir Sultan Ahmed had something to do with that Committee, and I think he will bear me out that that was the position.

Sir Sultan Ahmed: That is so, My Lord.

Chairman: Would you mind telling me this? I do not want to say too much, because we have very much the same sort of thing going on in England; but I want to get a concrete case, because I find it is so difficult to argue about generalities. Supposing, for example, we will say, a man goes to law in Bombay—"A" goes

to law with " B," and wants £500; and supposing he gets judgment against " B " for £500, how many chances of appeal has " B " got?

Sir Tej Bahadur Sapru: If he goes to law on a claim of £500, he must file his suit on the original side of the Bombay High Court.

Chairman: That is the first hearing?

Sir Tej Bahadur Sapru: Yes. His suit is tried by a single Judge. Then there is an appeal to a Division Bench, which generally consists of two Judges. That is the second hearing. In Calcutta, too, they have brought it down to two. That is the second hearing. Then he may have a chance of appeal to the Privy Council if there are differing judgments or if there are concurrent judgments when the case involves a substantial question of law; and that phrase has been repeatedly explained by the Privy Council in various decisions. Then he may have a chance of appeal to the Privy Council.

Mr. Zafrullah Khan: Not where the original sum sued for is £500, that is, below Rs. 10,000.

Sir Tej Bahadur Sapru: Well, if it is above Rs. 10,000.

Chairman: £750?

Sir Tej Bahadur Sapru: Yes. Now, that illustration is not quite sufficient, if Your Lordship will pardon me. Supposing the case is filed in one of the districts, and let us assume that the case is of the pecuniary value of Rs. 10,000 or above. Now, a case like that would ordinarily be tried by a Subordinate Judge who exercises original jurisdiction. That is number 1 trial. Then an appeal lies to the High Court; and an appeal of that sort will always be heard, under the Rules of the Court, by a Division Bench consisting of two Judges. That is number 2. Then an appeal can lie to the Privy Council, subject to the provisions laid down in the Code of Civil Procedure. If there are differing judgments, then an appeal lies as a matter of course; and if there are no concurrent judgments, but it is over Rs. 10,000 and a substantial point of law is involved, then an appeal lies to the Privy Council. So, ordinarily, there is only one appeal; but there are two appeals in suits of a value up to Rs. 5,000.

Chairman: I am much obliged. Would you kindly help me with regard to this, so that we get it clear? Let us assume one of these latter cases, where it is a question under the new system of some federal law being at stake. There will be the first hearing. What is the first appeal?

Sir Tej Bahadur Sapru: Let us assume that an issue involving a federal question is tried in the Supreme Court. It will go before a single Judge of the Supreme Court. You can provide for an appeal from the decision of the single Judge to a Division Bench of the same Court. If the Division Bench affirms the decision of the single Judge, then there need be no appeal to the Privy Council; but if the decision of the first Court is reversed, then possibly (if

the Indian States agree) there may be an appeal to the Privy Council. Speaking for myself, however, I should treat the decision of the Supreme Court in a divisional jurisdiction to be final and conclusive.

Chairman: Otherwise there would be the original hearing and three appeals in a case where there was disagreement between the first and second Court.

Sir Tej Bahadur Sapru: I stand only for two appeals.

Mr. Zafrullah Khan: May I give an illustration which will show the dangers on the other side? We have had a concrete case in the Punjab which will show how many appeals can be taken. Some time ago, the district boards in the Punjab were authorised by the Local Government to levy a certain kind of tax, and they proceeded to levy it by notification. It was contended by some assessees, who instituted a suit for a declaration to that effect, that the Local Government had no power to authorise the district boards to levy that tax, inasmuch as it was a tax of a nature which was not in the Schedule with regard to which such power had been given. I need not detain the Committee over that. Eventually the High Court decided that it was so, and the tax was declared to be illegal. The result was that several persons who had paid this tax already sued to recover it back, and the district board's finances were in a very perilous condition. The Local Legislature then proceeded to pass an Act, which was called the District Boards' Tax Validating Act, saying that the imposition of this tax between certain dates from the first imposition of it to the date at which it had been declared to be invalid by the High Court should nevertheless be considered to have been valid. Then suits were instituted for a declaration that this Act was *ultra vires* of the Local Legislature. This is what I want to draw attention to. The valuation in each of these suits was very low. One man had been assessed at three rupees, which is about 4*s*., and he instituted a suit for a declaration or an injunction against the district board for recovery of this tax. This suit went first to the Court of a Sub-Judge, fourth class. Whichever way it was decided, there was an appeal either to the senior Sub-Judge (as he is called) in that particular district, if he had powers of hearing appeals, or to the District Judge. That was the first appeal. Whatever the decision of the District Judge, as this involved a question of law, there was a second appeal, to the High Court, which according to its Rules and according to the sum involved, would ordinarily be heard by a single Judge; and, whatever his decision, there would then be an appeal to two Judges of the High Court under the Letters Patent. That would be the third appeal. As a matter of fact, at this stage we were able to avoid this. I appeared on behalf of the Government in all these cases in which appeals were filed, and I made the request at the initial stage that all these matters should be heard together and an order passed that, instead of their being heard by one Judge, they should be heard by two. They were accordingly heard by two Judges, who declared that the Statute was within the

powers of the Local Legislature. It was open to those people who contested the validity of this Statute to go further, and to say that, under section 110 (c) of the Civil Procedure Code, this was a case in which there could be an appeal to the Privy Council. It might therefore go to the Privy Council, so that, in all, there could have been four appeals; and, with the first trial, that means the case could be dealt with by five Courts. When questions of Federal law are raised, that position had better be kept in mind.

Sir Sultan Ahmed: I can add that a case like that actually came to the Privy Council on one occasion, and the decision of the High Court of Patna was reversed by the Privy Council. The High Court of Patna consisted of five Judges to hear that particular appeal, and the value involved was about £5. Such cases, of course, are exceptional; they are very rare.

Mr. Zafrullah Khan: Federal cases will always be like that.

Sir Sultan Ahmed : That point covered a large number of cases, and a very important question of principle was involved. That is why five Judges had to sit in the High Court; and there was a difference of opinion among them, three being on one side and two on the other. I brought the case to the Privy Council and succeeded; but those cases are very rare.

Sir Tej Bahadur Sapru: They are very rare; they need not detain us.

Sir Provash Chunder Mitter : These cases are very rare; and neither as a lawyer nor as a citizen would I exclude jurisdiction in these cases. I remember a case where the claim involved was only a sum of Rs. 2 or Rs. 4. The sum was very small, but it was a case where the landlord wanted to exact an illegal cess, and the ryots objected and the law was laid down. The cases to which Mr. Zafrullah Khan referred affected every assessee. Those cases are only one in a hundred, or perhaps even one in five hundred.

Sir Tej Bahadur Sapru : It is more like one in a thousand.

Sir Provash Chunder Mitter : Therefore, so far as our immediate point is concerned, those cases where valuable rights of a large number of people are involved, although the pecuniary value is small, may be kept apart.

I am obliged to Sir Tej Bahadur Sapru for his intervention; and that strengthens my position.

Mr. Jinnah : But cases of the character described by Mr. Zafrullah Khan and others have arisen in England and have been taken to the House of Lords.

Sir Tej Bahadur Sapru : Yes, and much more in this country than in India.

Sir Provash Chunder Mitter : Undoubtedly, and therefore I think it would be very unwise not to give the right of appeal in those cases, especially as the number is very small.

To go back to my estimate, Sir Tej Bahadur Sapru has referred to the recommendations of the Civil Justice Committee; and he further mentioned that, if those recommendations were accepted, the number of appeals to the High Court would be reduced, and therefore the number of appeals to the Judicial Committee or to the future Supreme Court would be reduced. I have no quarrel with that proposition, but I was dealing with the present system. So far as the system referred to by my friend, Sir Tej Bahadur Sapru, is concerned, I would only say that, even if you had a Division Bench of two Subordinate Judges, if the value be more than Rs. 10,000, there should be an appeal; and, on the other hand, perhaps the number of appeals would increase. At present, if a litigant wants to file an appeal, he has to go to Calcutta or Patna or some other place which may be at some distance from his home; but if the appeal can be heard in his own district town, the number may increase. We need not speculate on this, however. My real point is that, before we take up the question of civil appeals before the future Federal Court or Supreme Court, we should go carefully into the matter. If we can possibly get more accurate figures, let us get them by all means, because on the number of appeals much will depend. We have, however, gone on for many years with the present Judicial Committee, and is there really any tremendous urgency for starting this new experiment right at the threshold of another new experiment? As I have already said, my sympathies are all in favour of civil appeals being tried by tribunals in India by the best possible Judges; but what I am pleading for is this. Let us not start with civil appellate jurisdiction from the very beginning; let us wait for five years, ten years or fifteen years and see how the experiment functions. At the same time, I am free to confess that, although we have first-rate material in India, the materials in England—the class of Judges that are available to the Judicial Committee—are of a much superior character. That is an aspect which you must not lose sight of. But in spite of that, I am on general principles in favour of civil appeals being entrusted to tribunals in India. But I would strongly urge, for the very success of the experiment, that this should not be so from the very beginning.

Now, My Lord, I mentioned the point about the location of the Court; and there again, as I was anxious to finish before the Committee rose yesterday afternoon, I did not mention one or two points which I should like to mention. I have strong objections to Delhi; and, apart from the point I have mentioned, I have a reason. Delhi, at the present moment, has merely a District Court. Supposing you have a Court limited to federal questions, then, without any disrespect to Delhi lawyers, I think lawyers in places where there are High Courts are better suited, for example, Allahabad, Bombay, Madras, Patna—wherever there are High Courts.

Dr. Shafa'at Ahmad Khan : Not Lahore?

Sir Provash Chunder Mitter : Yes, Lahore. In places where there are High Courts, you are likely to have a better type of

lawyer. Now, if you have a Supreme Court dealing with both federal questions and ordinary civil litigation, you may expect some lawyers to migrate for the practice there.

Sir Maneckjee Dadabhoy : Some? I am sure they would all rush there?

Sir Provash Chunder Mitter : Well, Sir Maneckjee, everybody is not as anxious to go in for another vocation as some people are. My Lord, if a lawyer is in great demand, say in Calcutta or Allahabad, is it likely that he will change his place of practice? He is more likely to be taken down there specially and paid very substantial fees. If you have your Supreme Court in a place where there is no existing High Court, the chances are that fourth-rate and fifth-rate lawyers will migrate there. We do not want this great experiment to be started under such a handicap. I therefore strongly urge that, whatever the place may be, it ought to be a place where there is an existing High Court. There is also another point. At Delhi you have the location of your Federal Government. I would much rather that your Supreme Court or your Federal Court should be located at a place not in close proximity with the Executive. In these federal cases, the Executive will be deeply interested, supposing there is a question between the Federal Government and a Provincial Government, or between the Federal Government and a State. I have given certain reasons. Whether those reasons weigh with all of you is a different matter; but those are my reasons.

Sardar Ujjal Singh : Can you state exactly where the advantage is if the Court is situated at Allahabad or any other Provincial centre? Surely the same principle applies.

Sir Provash Chunder Mitter : In Provincial Centres, the State Executive cannot possibly have the same influence as the Executive of the Federal Government would have in Delhi. If there be litigation between, say, Madras and Delhi, Allahabad would be neutral. I admit that, if it is litigation between the United Provinces and the Punjab, or between the United Provinces and the Federal Government, that argument would not apply; but in those cases we have already provided that some other place may be selected by the Chief Justice. In the vast majority of cases, however, it would be better to have some place other than Delhi.

Sir Tej Bahadur Sapru : Allahabad?

Sir Provash Chunder Mitter : Certainly; I have pleaded for Allahabad. It will be more central.

Now, My Lord, I will next take up the question of the High Courts.

Sir Maneckjee Dadabhoy : May I ask you one question? Is the Privy Council influenced by the Cabinet here?

Sir Provash Chunder Mitter : No. From that, I suppose, you desire to draw the conclusion that in India there is no possibility of influence. My answer is an emphatic no. I do not want to go

into those matters. As a member of the Executive, and as one who has had thirty-seven years' experience of Law Courts, I do say that, although fortunately those cases are very rare. I would certainly take into consideration that, as matters stand in India at the present moment, there are occasional indications of that sort of thing. I will not go further than that.

Mr. Zafrullah Khan : It is a terrible confession and a terrible indictment.

Sir Provash Chunder Mitter : It is, and I say that with a full sense of responsibility, although some of you are perhaps misunderstanding my remarks.

Now, My Lord, I was going to deal with the question of the High Court. I agree with Sir Tej Bahadur Sapru that direct relations with the Federal Government are desirable; but I strongly condemn the Bengal system, where the Provincial Government has to find the funds and the Central Government administers. Therefore, although on general principles the High Courts should be under the administration of the Federal Government, we have to devise some means by which the financial question can be settled satisfactorily. Well, the financial question can be settled, perhaps, in one of two ways—either by allocating some portion of the Court fees or by a contract system. Suppose that the Federal Government enters into an arrangement for a period of, say, ten years, they form certain estimates and certain payments are made for a period of ten years—it may be five years or it may be ten years—a system under which certain payments are made on an estimated basis by the different Provincial Governments. The actual expenditure may be slightly less or slightly more. I would plead for a generous payment by the Provincial Governments, so that, if any High Court requires an additional Judge, there may be enough funds in the hands of the Federal Government, or if any High Court wants some ministerial officers or some change in the system of paper books (about which we had a battle royal in the Bengal Legislative Council) the Federal Government should have enough funds in its hands. If it is a contract system, then it does not matter whether Rs. 20,000 or Rs. 50,000 or a lakh is retained as a surplus by the Federal Government in a particular year, or in another year it is a deficit of Rs. 10,000 or Rs. 20,000; but I plead for a contract system in preference to a system of Court fees, and for this reason. If you enter into a system of Court fees, you enter into various complicated details. For example, in the High Courts all Court fees in probate cases and in letters of administration cases are collected from big estates. We had a recent instance where fifty-two lakhs was collected for Court fees when a very rich man died. That sum was collected by the Calcutta High Court. We have constantly cases of five lakhs, ten lakhs, seven lakhs, which are collected as Court fees, for fees of letters of administration or probate duties. Now, if we have a system of Court fees, then we enter into that complication; but apart from that complication there are other complications. The Court fees levied

in the High Court are part of a system. Sometimes the lowest of the Courts makes a profit, and very often the High Court, with its twelve or fifteen or sixteen Judges, is run at a loss. On the other hand, one knows how much a High Court costs, with its Judges and officers. Let me assume that it costs in a particular Province fifteen lakhs, and in another Province ten or twenty lakhs. I would go into the matter and then have a provision for, say, ten years, in order to avoid too constant revision. Some means might be devised as to how the revision is to take place. Provided that is done, I am in favour of all the High Courts being under the Federal Government. If I may say so, it is an old idea of mine. In 1911 I had the privilege of moving a resolution in the Congress, before we were excluded from the Congress, and the Congress accepted this suggestion of mine.

I will next take up the question of the appointment of civilian Judges in the High Courts. I had to consider this matter very carefully when I sat on the Services Committee, and I adhere to the conclusion which I formed then, namely, that although I am all for retaining the Indian Civil Service and also a certain percentage of British members of the Indian Civil Service, I am against retaining I.C.S. Judges in our High Courts. I agree with Sir Tej Bahadur Sapru that, in the past, we had some very good I.C.S. Judges; but they made good in spite of their limitations because of their innate qualities, and also because they had very great experience of the rural areas. But I am sorry to say that the quality of our I.C.S. Judges has been steadily going down. One reason for this may be that it is easier to come home; another reason may be that they have more amenities in the *mofussil* than they had in the old days; a third reason may be that men were more of a scholastic trend of mind in the old days than they are to-day. Whatever the reasons may be, I do not want to mention names, but I do say that the quality of our I.C.S. High Court Judges is going down. Twenty or thirty years ago, some of the I.C.S. High Court Judges we had could not only hold their own with the best of the lawyer Judges, but could do even better; but I must say that now—and it is my personal experience in my Province—the quality of I.C.S. Judges is going down.

Sir Muhammad Shafi : I do not know what my learned friend's experience in Bengal is, but in the Punjab we have had cases in which members of the I.C.S., who had been serving on the executive side for ten and twelve years, were suddenly transferred to the judicial side; and then, after they had had judicial experience only for two or three years, were raised to the Bench.

Sir Provash Chunder Mitter: I do not quite see the point of my friend's interruption.

Mr. Iyengar : He confirms you.

Sir Provash Chunder Mitter: If he confirms me, I have no objection; but there was no necessity for the interruption, and perhaps you will allow me to go on.

Mr. Jinnah : May I just say a word? What Sir Muhammad Shafi is driving at is this, that it is not the fault of the man; it is the fault of the system.

Sir Provash Chunder Mitter : I understand that he is trying to help me, but my only objection is that it interrupts my line of thought. I am, however, very grateful to Sir Muhammad Shafi.

Now, My Lord, I do believe that a lawyer who has never practised lacks something which no amount of learning or experience can replace. A lawyer who has practised can get at the truth more quickly than a man of the same character and of the same calibre who has never practised. I will not develop that point; every lawyer knows what I am driving at. For that reason, and for an additional reason which I will mention, I think members of the Indian Civil Service should not be retained in the High Courts. The additional reason is that I am one of those who think that India has nothing to lose by the retention of the British element in the Civil Service for some time to come, and not only nothing to lose, but something to gain. I am not ashamed publicly to state that India has much to gain by the retention of the British element in the Civil Service. The position of the British element will be better, however, if you retain them where you need them most, than if you try to retain them where you need them least, and not only where you need them least but where, perhaps, they are not as competent as the lawyer Judges. That is an additional reason which I put forward for not retaining the Indian Civil Service element in the High Courts.

I will next refer to the eligibility of all Judges for the Chief Justiceship. Certain difficulties of interpretation have been pointed out, but I strongly urge that those difficulties should be removed and that provisions should be made so that all High Court Judges might be made eligible for the post of Chief Justice.

As regards the age limit, I suggest the age limit should be not less than 65 years, and I would not object to 70. There is a very good reason behind this, My Lord. We have heard that very often eminent lawyers are not anxious to take up a judgeship. I have personal friends who were anxious to take up a judgeship but who could not do so for personal reasons. Take the case of a lawyer who has got a growing family and has to educate his children and thus has responsibilities, and he has just started making a good income. That man, if he is patriotic, feels the urge of his immediate duties on the one hand and the urge of his patriotism on the other, and may succumb to the urge of the immediate duties, human nature being what it is. On the other hand, if you ask that man five or ten years later to take a judgeship he will very likely take it. If you ask professional men to take a judgeship when they are just getting on in their profession, you will find it much more difficult to get suitable men. If the man is sufficiently patriotic, he may take the position, of course; but if you ask him to take the position at the age of 53 or 54, and he can at that age

get a full pension after his retirement from the Bench, you will get better material. That is a point which I should like you, My Lord, and every member of this Committee to consider.

Sir Maneckjee Dadabhoy : Yes; he is patriotic when he is decrepit!

Sir Provash Chunder Mitter : If some of our most eminent men can hold their own in the professions, in the world of commerce and in the Legislatures at that age, I do not see why a Judge must necessarily be decrepit at the age of 65. My Lord, if we can get a better type of Judge by raising the age limit, I do say we should take that into consideration. No doubt questions of health, and the fact that longevity is less in India than in other countries, should be taken into consideration. I know instances where Judges who were capable of doing very good work were compulsorily retired, although the Chief Justice, the Governor-General and everybody wanted to give such Judges extension.

Chairman : Are you in favour of giving anybody power to extend for two years?

Sir Provash Chunder Mitter : No, I am dead against that. A Judge should be able to stand on his own right; he must not be dependent upon anybody's favour. Therefore, I would have an age limit and no power of extension. I agree to 65 and I would not object to 70. This is particularly so with regard to the Supreme Court, because one class of suitable Judges you may have for the Supreme Court is successful Judges of the High Court, and if you have an age limit of 60 you will not be able to recruit so easily from that class of Judge. We have come across cases in which a brilliant lawyer has not proved to be so successful as a Judge. We have also come across cases where a brilliant lawyer has been also a brilliant Judge. Where a man has proved himself to be a good Judge in the High Court, his judicial capacity becomes known. Therefore, for the Supreme Court particularly, I ask for an increase of the age limit. My Lord, that is all I have to say.

Mr. Gandhi : Lord Chancellor and fellow Delegates, I feel considerable hesitation in speaking on this subject, which has been rendered so highly technical by the course that the discussion has taken; but I feel that I owe a duty to you and a duty to the Congress which I represent. I know that the Congress holds some decided views on the question of the Federal Court—views which would be, I am afraid, very distasteful to a large number of the Delegates here. Whatever they are, seeing that they are held by a responsible body, it is, I suppose, necessary that I should at least present them to you.

I see that the discussions are based, if not upon utter distrust, upon considerable distrust of ourselves—that the National Government will not be able to conduct its affairs in an impartial manner. This communal tangle also is colouring the discussion. The Congress, on the other hand, bases the whole of its policy on trust and

on confidence that, when we have come to power, we shall also come to a sense of our responsibility, and all the communal bias will drop out. But should it prove otherwise, then, too, the Congress would run the boldest risks imaginable because, without running those risks, we shall not be able to exercise real responsibility. So long as we have the mental reservation that we have to rest upon some foreign power for our guidance and for conducting our affairs at a critical juncture, so long, in my opinion, there is no responsibility. One feels also embarrassed by the fact that we really are trying to discuss this thing without knowing where we shall be. I should give one opinion if Defence was not under the control of the responsible Government, and another opinion if Defence was under our own control. I proceed upon the assumption that, if we are to enjoy responsibility in the real sense of the term, Defence will be under our control—under national control in every sense of the term.

I entirely sympathise with Dr. Ambedkar in the difficulty that he raised. It is all very well to have a judgment of the highest tribunal; but if the writ of that tribunal does not run beyond the confines of its own Court, that tribunal will be a laughing-stock of the nation and of the whole world. What is then to be done in connection with that writ? What Mr. Jinnah said, of course, came home—that the military would be there; but it will be the Crown that will run the writ. Then I would say, let the High Court also, or the Federal Court, be under the Crown. In my opinion, the Supreme Court has to be, if we are responsible, under the responsible Government; and therefore the process of carrying out the writ has also to be made good by the responsible Government. Personally, I do not share the fears that actuate Dr. Ambedkar; but I think that his objection is a very reasonable objection, and that a Court which gives judgments should also have perfect confidence that its judgments will be respected by those who are affected by its judgments. Hence I would suggest that the Judges should have the power of framing rules in order to regulate matters in connection with those judgments. Naturally the enforcement will not rest with the Court—the enforcement will rest with the executive authority; but the executive authority would have to conform to the rules that might be framed by the Court.

Somehow or other we fancy that this Constitution is going to give us every detail in connection with the composition of this Court. I respectfully differ from that view in its entirety. I think that this Constitution will give us the framework of the Federal Court and will define the jurisdiction of the Federal Court, but the rest will be left to the Federal Government to evolve. I cannot possibly understand that the Constitution is also going to tell us how many years the Judges are to serve, or whether they are to resign or retire at the age of 70 or 95 or 90 or 65. I think that these will be matters to be taken up by the Federal Court; and hence I propose a drastic method, for what it may be worth,

that the Constitution will give us, to start with, the Judges, and these Judges will serve for a fixed, definite period, so that the responsible Government might not have to shoulder the burden of a Federal Court or a Supreme Court, whatever we choose to call it, which may not answer the needs of the country.

We bring in the Crown at the end of almost every sentence. I must confess that, according to the conception of the Congress, there is no question of the Crown. India desires complete independence; and if India enjoys complete independence, whoever the supreme authority there may be, that supreme authority will be responsible for the appointment of Judges and several other matters which to-day belong to the Crown.

It is a fundamental belief with the Congress that, whatever the course the constitution takes, there should be our own Privy Council in India. The Privy Council's portals, if it is really to give relief to the poor people in matters of the highest importance, should be open to the poorest people in the land, and I think that is impossible if the English Privy Council is to decide our fate in matters of the greatest importance. There, too, I would guide ourselves by implicit trust in the ability of our Judges to pronounce wise and absolutely impartial decisions. I know that, in making great changes, we run always very great risks. The Privy Council here is an ancient institution, and an institution which justly commands very great regard and respect; but, in spite of all the respect that I have for the Privy Council, I cannot bring myself to believe that we will not be able to have a Privy Council of our own which will command universal esteem. Because England can boast of very fine institutions, I do not think that therefore we must be tied down to those institutions. If we are to learn anything whatsoever from England, we should learn to erect those institutions ourselves. Otherwise there is a poor chance for this nation whose representatives we claim to be. Therefore, I would ask us all to have sufficient trust and confidence in ourselves at the present moment. Our beginning may be very small, but if we have strong, true and honest hearts to give decisions, it does not matter in the slightest degree that we have not got the legal traditions which the Judges in England claim, and very properly boast of before the whole world.

That being my view, I feel that this Federal Court should be a Court of the widest jurisdiction possible, and not decide cases only that arise from the administration of federal laws. Federal laws of course will be there, but it should have the amplest jurisdiction to try all the cases that may come from the four corners of India. It is, then, a question where the subjects of the Princes will be and where they will come in. Subject to what the Princes may have to say, I would suggest, with the greatest deference and with equal hesitation, that there will be, I hope, at the end of it—if we are going to make something out of this Conference—something which will be common to all India, to all the inhabitants of India, whether they come from the States or whether they come from the

rest of India. If there is something in common between all of us, naturally the Supreme Court will be the guardian of the rights that we may consider to be common to all. What those rights should be, I am totally unable to say. It is entirely for the Princes to say what they can be and what they cannot be. In view of the fact that they represent here not only their own Houses but have taken on themselves the tremendous responsibility of representing their subjects also at this Conference, I would certainly make a humble but fervent appeal to them that they would of their own accord come forth with some scheme whereby their subjects also may feel that, though they are not directly represented at this table, their voices will find adequate expression through these noble Princes themselves.

So far as the salary is concerned, you will laugh, naturally, but the Congress does believe that it is an impossible thing for the Congress, which represents a nation of dwarfs, to vie with the English nation, which represents to-day giants in wealth. India, whose average income is 2*d.* per day, can ill afford to pay the high salaries that are commanded here. I feel that it is a thing which we will have to unlearn if we are going to have voluntary rule in India. It is all very well, so long as the British bayonet is there, to squeeze out of these poor people salaries of Rs. 10,000 a month or salaries of Rs. 5,000 a month or salaries of Rs. 20,000 a month. I do not consider, however, that my country has sunk to such an extent that it will not be able to produce sufficient men who will live somewhat in correspondence with the lives of the millions and still serve India nobly, truly and well. I do not believe for one moment that legal talent has to be bought if it is to remain honest. I recall the names of Motilal Nehru, C. R. Das, Manomohan Ghosh, Badruddin, Tyabji and a host of others, who gave their legal talent absolutely free of charge and served their country faithfully and well. The taunt may be flung in my face that they did so because they were able to charge princely fees in their own professional work. I reject that argument, for the simple reason that I have known every one of them with the exception of Manomohan Ghosh. It was not that they had plenty of money and therefore gave freely of their talent when India required it. It had no connection with their ability to have ease and luxury. I have seen them living the life of poor people and in perfect contentment. I can point out to you several lawyers of distinction who, if they had not come to the national cause, would to-day be occupying seats on the High Court Benches in all parts of India. I have therefore absolute confidence that, when we come to conduct our own affairs and so on, we will do so in a patriotic spirit and taking account of the miserable state that the millions of India occupy.

One word more and I have finished. Seeing that the Congress holds the view that this Federal Court or Supreme Court—whichever you call it—will occupy the position of the highest tribunal beyond which no man who is an inhabitant of India can go, its

jurisdiction in my opinion will be limitless. It will have jurisdiction, so far as federal matters are concerned, to the extent that the Princes are also willing; but I cannot possibly imagine that we shall have two Supreme Courts—one in order to deal with merely federal law and another to deal with all the other matters that are not covered by the federal administration or the Federal Government. Because, at the present moment, I suppose, as things go, the Federal Government will concern itself with the minimum of subjects, matters of the highest moment will be extra-federal. Who is to adjudicate upon these extra-federal matters if not this very Supreme Court? Therefore, this Supreme Court or Federal Court will exercise double jurisdiction, if necessary treble jurisdiction. The greater the power that we give to this Federal Court, I think, the greater the confidence we shall be able to inspire in the world and also in the nation itself.

I am sorry to have taken up these precious minutes of the time of the Conference, but I felt that, in spite of my great reluctance to speak to you on this Federal Court, I must give you the views that many of us in the Congress have been holding for a large number of years, and which we would, if we could, spread throughout the length and breadth of India. I know the terrible handicap under which I am labouring. All the most distinguished lawyers are arrayed against me; the Princes also are probably also arrayed against me so far as the salaries and jurisdiction of this Court are concerned. But I would be guilty of neglect of duty to the Congress and to you if I did not give you the views that the Congress and I hold so strongly on the matter of the Federal Court.

Chairman : We are much obliged to Mahatma Gandhi for so very frankly and so very fearlessly expressing his view. We are here to exchange views and to hear arguments upon them; that is the object of the Conference. If he will allow me to say so, when you know what a man wants you can do your best to meet him, and he will no doubt do his best to meet you. The difficulty is to negotiate with a man who does not know what he wants. I am very much obliged to Mr. Gandhi for putting his views before us like that. It will always be my ambition to try and go as far as possible to meet them, and, indeed, as far as possible to meet anybody's views. I am sure we shall have that spirit of accommodation all round the Federal Structure Committee. Meanwhile, let me express my personal thanks to Mr. Gandhi for putting before us so very frankly and so very fearlessly what his views upon this subject are.

Mr. Jinnah : Mahatma Gandhi made a reference to what I said. I did not quite catch that.

Mr. Gandhi : You see, you put Dr. Ambedkar in a quandary by saying what should happen, and Dr. Ambedkar was afraid of the logical consequences of his own remarks. Therefore, I simply brought your name in and said that, if India is divided into parts, one governed by the Crown and the other governed by herself, we are likely to fall between two stools.

Mr. Jinnah : I did not express any opinion.

Mr. Gandhi : No, I know you did not express any opinion; but you said: " I assume that Defence is a Crown subject."

Mr. Jinnah : I did not say " I assume." I said that, so far as the report of the Federal Structure Committee has gone, it is assumed that Defence is a Crown subject. I expressed no opinion.

Mr. Gandhi : That is right.

Mr. Zafrullah Khan : Lord Chancellor, I have a very few observations to offer on some of the matters which have been discussed in connection with the Federal Court. As regards the jurisdiction of the Federal Court, I venture to suggest that the simplest plan would be the one suggested by Your Lordship in your Note—that it should have original jurisdiction with regard to certain federal matters only that have been described as matters between different Units of the Federation or between one or more Units and the Federation itself. In such matters, I would support the suggestion that there should be an appeal from the decision on the original side to two or more Judges of the Federal Court itself, and from the appellate decision an appeal to the Privy Council only when the Federal Court grants leave for such appeal, or when the Privy Council, on being moved, grants such leave to appeal.

That is one branch of its jurisdiction. The other would be the appellate jurisdiction of the Federal Court, first, in federal matters. These matters would come up in the first instance before Provincial Courts or State Courts, and an appeal would then be carried to the Federal Court. With regard to these, I have one suggestion, and it is this. Ordinarily the question as to which should be the Court of first instance in such matters would depend upon the valuation of the suit; but having regard to the importance of the matters that are likely to fall under this category, and also having regard to the necessity of an expeditious decision on matters of this kind, I would very respectfully submit that the statute or the rules ought to provide that matters of this kind should, in the first instance, be heard by some higher Court than ordinary Courts of first instance in the Provinces or the States. That is to say, supposing, as in the illustration given by me earlier this morning, there is the question of the *ultra vires* or the *intra vires* of a particular statute, and the suit in which this question arises is of a very low valuation, under the ordinary law as it at present exists the suit would be heard in British India by a Sub-Judge of the fourth class, with an appeal to the District Judge, a second appeal to the High Court to be heard by a single Judge, a Letters Patent appeal to two Judges of the High Court, and then, if we had this Federal Court, an appeal to the Federal Court; and, with great respect, I think that that ought to be avoided. That is to say, the suit would have to run through four stages in the Provincial Courts before it could be brought up before the Federal Court. My submission, therefore, is that the statute or the rules ought to provide that a matter of that kind in the very first instance ought to be heard in some Court higher

than the ordinary Courts of first instance in the States or in British India.

Chairman : I am very much obliged to you for that suggestion. It has been thought of here; but would you just tell me your view with regard to this? I quite agree with you that if you could start in a higher Court—say, for the sake of argument, the Court of Appeal and not a Court of first instance—it has great advantages, but there is this trouble. I have no doubt you have thought of it. Supposing, for example, a suit partly depends upon questions of fact and partly depends upon questions of law, it is a little inconvenient to start a suit like that in a Court of Appeal and let the Court of Appeal find the facts. You see, you want a sort of Court of first instance to find the facts. I rather agree with you, but how do you get over that difficulty?

Mr. Zafrullah Khan : I would meet that difficulty by suggesting that suits of this nature should, in the first instance, be heard by Courts, at any rate in British India, consisting of what are known as District Judges, who have, even under the present law, original civil jurisdiction. A District Judge at present can hear, and sometimes does hear, suits on the original side, and determines the facts as well as the law on the original side. For instance, in the Dera Ghazi Khan District in the Punjab, all suits above the value of Rs. 5,000 are, in the first instance, heard by the District Judge, from whom an appeal lies direct to the High Court. The next provision I would suggest is that, in such matters, appeals should lie direct to the High Court and should be heard by a Division Bench. That would be secured by Rules of the High Court. So that the result would be that a Letters Patent appeal from the decision of one Judge of the High Court to two Judges would be avoidable. The matter would then come up to the Federal Court at the third stage—the trial and appeal to the High Court heard and determined by two Judges, and then the Federal Court itself.

With regard to the suggestion that the Federal Court should have appellate jurisdiction in ordinary matters also—at least so far as British India is concerned—I have to say only this. I agree emphatically with Sir Muhammad Shafi that the Federal Court should have, whether as Federal Court or in its capacity of Supreme Court, criminal appellate jurisdiction to deal with matters where the High Court, on appeal by the Local Government, has converted an acquittal into a conviction, and where the offence is punishable either by death or by transportation for life. I think that, once a conviction is recorded (it does not matter by which Court), the person convicted ought to have at least once chance of appeal. In such matters—and these matters will be very few—I would give a right of appeal to the Supreme Court.

Chairman : I understand you to say that that is in cases where an acquittal has been turned into a conviction?

Mr. Zafrullah Khan : Yes; and where the offence involved is an offence punishable by death or by transportation for life.

Sir Muhammad Shafi : That was exactly my position.

Mr. Zafrullah Khan : With regard to other criminal matters, apart from reservations on points of law and certificates of the Advocate-General in the High Courts in the Presidency towns, I would not have any appellate jurisdiction vested in the Federal or the Supreme Court; that is to say, no appeal as of right.

With regard to the Prerogative of the Crown as at present exercised by the Privy Council on the criminal side, I would leave that untouched. I would leave that with the Privy Council and would not wish to have it transferred to the Federal or the Supreme Court, because that, I conceive, is a peculiar Prerogative in which His Majesty, as the fountain head and also as the reserve of justice, as it were, intervenes in very peculiar and very exceptional circumstances to correct certain kinds of errors.

With regard to ordinary civil appellate jurisdiction, my difficulty is this. I agree entirely that it is extremely desirable that such civil appellate jurisdiction as is at present exercised by the Privy Council should be transferred to the Federal Court.

Mr. Jinnah : The Supreme Court?

Mr. Zafrullah Khan : Or the Supreme Court. My difficulty is that, at the very start, you are likely to be faced with the position that there will be a very heavy amount of work on this side. I am prepared to take the figures submitted by Sir Sultan Ahmed as being moderate ones, namely, 300 appeals in the year. I am also prepared to accept the suggestion that ordinarily an appeal of this kind should be heard by a Bench of three Judges in the Supreme Court, and that if you have six Judges they will sit in two divisions all the year round. Taking the number of days on which the Privy Council sits during the year here to discuss appeals, in one year it sits ordinarily on 140 days. Let us suppose the Supreme Court sits for 150 days in India. That means that two divisions will sit on 150 days, which is equivalent to one division sitting on 300 working days.

Chairman : Do you mind telling me what are your hours in India?

Mr. Zafrullah Khan : They differ in different High Courts; but in our High Court they are from 10 to 3·30, with an interval of half-an-hour.

Chairman : About 5 hours.

Mr. Zafrullah Khan : In India, especially in a climate of that kind, you could not expect your lawyers to sit longer than that.

Mr. Jinnah : Especially if they are 70 years old!

Mr. Zafrullah Khan : Particularly if they are over 70 years of age, you cannot expect them to sit longer than they sit in this country. That would give you, as I say, two divisions sitting for 150 days, which is equivalent to one division sitting on 300 working days. It is a very optimistic estimate that, on the average,

one appeal would be heard on one day and determined. I think it will take, on the average, considerably longer than that. Even on the modest estimate which has been made, therefore, six Judges will not by any means be capable of coping with this amount of work. That is a very serious difficulty. There are also a few criminal appeals which I have suggested should come up to the Supreme Court.

Now, of course, there are various ways of dealing with this difficulty. I do not say that this difficulty should not be met. One of the ways is by raising the valuation with regard to civil appeals. After all, there is no particular virtue or charm in the figure of Rs. 10,000, and this figure was fixed at a time when property had far less value than it has at present in India, even after the downward tendency of the last few years. That is one remedy, but I am not going to suggest remedies. My suggestion is this. I agree with the extreme desirability of investing the Supreme Court with this jurisdiction, and I agree with Sir Provash Chunder Mitter that the Statute should provide for the possibility of conferring this jurisdiction on the Supreme Court, leaving it subsequently to the Federal Legislature, whenever it chooses, and after it has gone thoroughly into the matter, to vest this jurisdiction in the Supreme Court. I should not, in this constitutional Statute, start with transferring this jurisdiction to the Federal Court; but I would leave it within the power of the Federal Legislature to do so whenever they consider they can make proper arrangements for the work to be carried on. I would respectfully differ, however, from the suggestion put forward by Sir Muhammad Shafi that, up to a certain valuation, appeals should go to the Supreme Court, but that above that valuation appeals—civil appeals, that is—should go to the Privy Council. I believe that would lead to a certain confusion.

Sir Muhammad Shafi : Lord Chancellor, in order to curtail the discussion, perhaps you will permit me to say that, so far as I am concerned, I am in favour of the transfer of appellate jurisdiction *in toto* to the Supreme Court. It was merely to conciliate gentlemen holding the kind of views that my friend, Sir Provash Chunder Mitter, holds that I suggested that, *during the transitional period*—that is what is being missed by my friends—the limitation of one lakh might apply.

Mr. Zafrullah Khan : Though the suggestion may be made to conciliate Sir Provash Chunder Mitter and those who think like him, and though it may be intended to apply only during the transitional period, I am afraid it would lead to complications; and one kind of complication might be this. Let us suppose that the Supreme Court, in an appeal properly brought before it, determines a certain question of law in a certain way. There is no appeal provided to the Privy Council in those matters, and that decision is final. That would be binding on the Courts from which appeals lie to the Supreme Court in such matters. Suppose there

was a different valuation for Privy Council appeals, and subsequently, in a matter with the higher valuation, the same question were brought before the Privy Council, and the Privy Council pronounces upon it in a different way. After those two precedents have been established, which is the precedent which the subordinate Court should follow?

Sir Tej Bahadur Sapru : The Privy Council. That is exactly what happens at the present moment. Where the decision of the full Bench of the High Court is one way and the decision of the Privy Council is the other way, then the decision of the Privy Council prevails.

Mr. Zafrullah Khan : The Privy Council is a Court of Appeal from all High Courts in India with regard to one valuation, Rs. 10,000 or upwards, and so on. Therefore, the Courts are all bound to follow the Privy Council. But if the Supreme Court is the final Court of Appeal with regard to suits up to the value of one lakh, and there is to be no appeal from its decision in such matters to the Privy Council, it is, up to one lakh, the final appellate Court whether in England or in India, and the lower Courts are bound to follow it.

Sir Tej Bahadur Sapru : So long as there is a Prerogative of the Crown under which an appeal can go to the Privy Council, the Privy Council will be the ultimate Court.

Mr. Zafrullah Khan : The Supreme Court in a case would technically and legally still be correct in deciding the same matter, if it came before it again, in accordance with its original decision. If there are no appeals from the Federal Court to the Privy Council, it is itself the Court of last resort, and is not bound by the Privy Council decision. That is the kind of confusion that is likely to arise. I do not want to labour the point.

With regard to the personnel of the Supreme Court, I want to make only one suggestion. It is this, that in addition to other qualifications that may be laid down for the eligibility of lawyers for appointment as Judges to the Supreme Court, I would suggest an obvious qualification, and I will give the reason for stressing it. It is this, that anybody who has served as a High Court Judge, whether you lay down any period or not, should be eligible for appointment to the Supreme Court. The reason why I stress this obvious qualification is this, that there are several kinds of people who are eligible for appointments to the High Court; and though they may not be directly eligible for appointment to the Supreme Court, if any such person has been appointed to the High Court, he should be eligible to be appointed to the Supreme Court. This would bring in members of the subordinate judiciary and others.

Sir Maneckjee Dadabhoy : I think that is a very sound principle.

Mr. Zafrullah Khan : With regard to the question of salaries, I need say no more than this—that in this, as in other matters, the

position is bound to be regulated by the laws of supply and demand. Those laws are bound to be followed; and whoever has to fix the salary will have to keep that in mind. I would certainly not raise the age limit for compulsory retirement to 70, though I think it would be desirable to raise it in the case of the Supreme Court to 65.

Chairman : I wanted to ask you about that. I am only thinking of difficulties which I personally happen to know about. What number of years qualifies for a pension in India? Is it 12 years?

Mr. Zafrullah Khan : At present it is 11½ years for Judges of the High Court.

Chairman : Perhaps you could help me in this, because in these matters I have had some little experience. Suppose you make the age limit at which Judges are to retire 65, and assume that they cannot get a pension unless they serve 12 years.

Mr. Zafrullah Khan: That, My Lord, is the full pension. The minimum qualifying period for the minimum pension is 8 years.

Sir Tej Bahadur Sapru : 6 years.

Mr. Zafrullah Khan: 6 years of full service, which is 8 years.

Sir Tej Bahadur Sapru: There are three kinds of pensions now, I believe. At the end of 6 years and 9 months you get a certain pension. I believe at the end of 9 years you get another pension. At the end of the full term you get a full pension.

Chairman : What I am thinking is this, that supposing you have got to serve 12 years for a pension and you have got to retire at 65, you cannot very well appoint a Judge who is aged 60, can you? The position is that the person responsible for appointing Judges would not want to make the State liable to pay a pension after 5 years' service, assuming that he gets a proportionate pension. You do rather want to get the full twelve years out of a Judge if you can, do you not? I am thinking now of the other side of it—those of us who have got the responsibility of appointing Judges. All I am saying is this, that if you want a Judge to earn his full pension, and he has got to retire at 65, you have got to appoint him before he is 53. I am not saying it is a wrong thing.

Mr. Zafrullah Khan: Your Lordship is perfectly right, and this is not a matter of principle that has got to be argued about. One has to draw a line somewhere, and my opinion is this, that people would generally be nervous in submitting disputes of this kind to the judgment of gentlemen of the age of over 65 in a climate like that of India. Sitting, say, in Delhi in May, a gentleman over 65 years of age would not be perhaps an ideal kind of Judge.

Mr. Jinnah : Might not the answer to your question be that, if you had a High Court Judge transferred to the Supreme Court, if he has been in the High Court for a certain number of years that

would count towards his pension? It is only the person who has not been in the Service already and was recruited from the Bar; and in that case you would certainly have to select him at the age of 53 or 52, in order that he should earn the full pension.

Mr. Zafrullah Khan : And at the age of 60 he may be willing to come in for five years without the prospect of a pension.

Now, My Lord, I would, with Your Lordship's indulgence, draw attention to one or two matters connected with what has been described by Sir Tej Bahadur Sapru as the general question of the judicature in India. The first question to which I want to draw Your Lordship's attention and the Committee's attention is this. At present, in British India, every subject is entitled, when he has a cause of action of that kind, to institute a suit against the Secretary of State for India, as representing India in its corporate capacity, after serving a notice under Section 80 of the Civil Procedure Code. With regard to Rulers of States, so far as the Indian States are concerned, I believe they cannot be sued in their corporate capacity as such States; but the Rulers of States can be sued in a British Indian Court if there is a question of which that Court has cognisance, only with the leave of the Governor General or the Governor General in Council—I do not know which it is.

Sir Tej Bahadur Sapru : The Governor-General in Council.

Mr. Zafrullah Khan : With the leave of the Governor-General, at any rate. That is one matter to which I wish to draw attention, that if it is open to a person in British India to sue the Secretary of State for India or, say, in future to sue a Federal Unit or the Commonwealth, after giving notice that he intends to institute such a suit—and the object of that notice has been described to be that the defendant Unit, or the Commonwealth, as will be the case in future, should have time to consider whether it will settle the matter out of Court rather than go into Court—if he has that power, he should have the right to institute a suit against any Unit of the Federation as such Unit in its corporate capacity, and that is a matter to which attention ought to be drawn. That is to say, he should be able not only to sue, say, the Government of Bengal, if he has a cause of action against the Government of Bengal, but also to sue the State of so-and-so if he has a cause of action against such a State.

Chairman : I suppose you have not got in India, in your Code, any set of rules for service out of jurisdiction?

Mr. Zafrullah Khan : No, there are no special rules with regard to service out of jurisdiction.

Chairman : What we have under Order XI is a complete code for service out of jurisdiction.

Mr. Zafrullah Khan : Then there is a question of a similar kind to which I want to draw the attention of the Committee. I am not aware—and I am not concerned with this matter—as to whether

State's subjects at present are able to sue in the State Courts either the Ruler of the State or the State in its corporate capacity. I say this is a matter with which I have no concern; but in future, supposing a States' subject—a subject of a State which is one of the Units of the Federation—has a cause of action against the Federation itself, and that is a matter which ought in British India ordinarily to be heard by a British Indian Provincial Court, it would be necessary, whether by rule or agreement or some such procedure, to invest specified State Courts with the jurisdiction to hear suits by States' subjects against the Commonwealth. At present, of course, they do not possess that jurisdiction, and if ordinarily it is open to a State's subject to sue the State in its corporate capacity or the head of the State in his representative capacity, then there may be difficulty unless this jurisdiction is given to the Federal Court. That is also a matter to which I beg to draw attention at this stage.

With regard to the question of the High Courts, certain matters have been raised, and I shall, within a very few remarks, submit my view on those matters. I agree entirely with Sir Tej Bahadur Sapru as to the interpretation of, I believe it is, sub-section 4 of section 101 of the Government of India Act.

Chairman : Will you tell me one thing? Supposing a subject of the State of Bhopal, travelling on a railway which belongs to His Highness of Bikaner, is injured owing to the negligence of the servants of the railway, how does he pursue his remedy?

Mr. Zafrullah Khan : He must sue His Highness of Bikaner.

A Member : Those suits are allowed.

Sir Tej Bahadur Sapru: I known from my personal experience that there are certain Indian States which allow their subjects the privilege to sue them. On the other hand, there are others which do not allow that privilege to their subjects. So far as the bigger States are concerned, I think the procedure is exactly the same as that in British India.

Mr. Zafrullah Khan : With regard to the appointment of a Chief Justice in British Indian High Courts, I agree with Sir Tej Bahadur Sapru that the appointment, whether the practice has been founded on a correct interpretation of the Statute, or whether it has been founded on an incorrect interpretation of the Statute, should no longer be confined to members of the English Bar. I would throw it open to all persons who are eligible to be appointed High Court Judges, whether civilians, or members of the English Bar, or members of the Indian Bar, or members of the subordinate judiciary. I am aware of, and I was a party to it, the resolution in the Services Committee (and I still emphasise it), that in future members of the Civil Service should not be recruited for appointments on the judicial side; but so long as they are eligible to become High Court Judges, they should also be eligible to become Chief Justice, and when they cease to be appointed to the High Court the question will not arise.

Similarly, I agree very strongly with Sir Tej Bahadur Sapru that the provision in the Act for the appointment of additional Judges should disappear altogether. It has done a good deal of harm in many directions. In order to secure the complete independence of the judiciary, the principle ought to be followed that, once a person has been selected for appointment as a High Court Judge, that selection ought to be final in the sense that, so far as his capacity is concerned, it must be assumed that he is fit to be a High Court Judge. The appointment should in no sense be a trial appointment, as very often happens at present. The difficulty can be got over in this way. I know the difficulty is that sometimes there are arrears in the Courts, and it is desirable to reduce those arrears, and thus temporary appointments are made. That difficulty, however, can be overcome by laying down, as is laid down in the Present Act, the maximum number of Judges, but not laying down any minimum number of permanent Judges, such as is laid down in the present Letters Patent. Subject to that maximum, Judges can be appointed to permanent posts. If it appears, after a certain time, that all these Judges are not wanted, then, after the next retirement, no new appointment need be made until it is felt that the number ought to be raised again; and thus an adjustment can take place from time to time without having additional Judges.

Mr. Jinnah : If you are to fix a maximum, you will require to change the Statute.

Mr. Zafrullah Khan : There is a maximum of twenty at present. The Government of India Act lays it down that each Court shall consist of one Chief Justice and not more than twenty Judges.

Mr. Jinnah : Of course, if you fix the maximum at one hundred it is all right.

Mr. Zafrullah Khan: No; the Government of India Act lays down the maximum at present.

Sir Tej Bahadur Sapru : You cannot exceed a certain number at present.

Sir Provash Chunder Mitter: But nobody has yet had twenty. We have made the nearest approach.

Mr. Zafrullah Khan : You should leave the maximum there, so as not to exceed that number; but do not lay down any minimum, so that you must have so many. You can then regulate the number subject to the work available. The statutory maximum is already laid down.

With regard to the suggestion that the High Courts should be centralised on the model of the present Calcutta High Court—a suggestion which has been made by Sir Tej Bahadur Sapru—with all respect to Sir Tej, I differ very strongly from the view put forward by him. Even with regard to the Calcutta High Court,

the arrangement—whatever may have been the historical reasons for it—has not worked in an entirely satisfactory manner; and one very obvious objection to it is this. If the administration of the High Court is to be directly subordinated to the Central Government and the finance is to remain with the Province, then the position is what may be described as a triangular one. Whenever the High Court wants funds, it approaches the Central Government. The Central Government knows that the Central funds will not have to provide the money which is required and the burden will fall on the Province, so that it may say "Very well, the High Court shall have these funds," and it will send a sort of certificate to the Provincial Government, which has to find the money. Let us suppose, however, that the High Court urgently requires an extension of its buildings, and let us suppose that the proposal for the extension of the buildings is a reasonable proposal, and that the Central Government thinks the High Court ought to have the money. Suppose, on the other hand, that the Provincial Government, possibly owing to a certain financial stringency, is not convinced of the reasonableness of the demand of the High Court and things that, for the present, and perhaps for some time to come, having regard to its other commitments, it is not able to provide the funds. That immediately raises a conflict of a type which should as far as possible be avoided. There are many other considerations which make it desirable that the present arrangement, which has certainly not led to any undesirable results whatever, should continue. Sir Tej Bahadur Sapru referred to pressure which it is sometimes sought to exercise on High Courts with regard to administration or the appointment of subordinate officials. He fears that pressure of this kind may be exercised in the local Legislative Council. I am very much afraid that that kind of pressure on the High Courts could easily be brought to bear even in the Central Legislature. It would only be necessary for a Province to ask one of its representatives in either House of the Central Legislature to raise such a point. It would be easy to raise it. Also, to keep the Central Legislature free from this kind of thing, it would be better to continue the present regulations so far as the High Courts are concerned.

That is all I have to say.

Sir Akbar Hydari: My Lord Chancellor, With regard to the different Heads which you have given us, regarding the Federal Court, I may say at once that, so far as question 1 is concerned, I agree that the appointment of the members of the Federal Court should be by the Crown and at its pleasure. As regards question 3, regarding the exclusive original jurisdiction, I also agree that the Federal Court should have exclusive original jurisdiction as set out in questoin No. 3 with regard to interpretation of the constitution, but not, of course, with regard to any matter which involves the interpretation of the Treaties with the Crown. In this jurisdiction, I should wish that there should be the possibility of providing, as of right, an appeal to the Privy Council, by a formula which

does not detract from the sovereignty of the States in any greater degree than the creation of a Federal Court.

Coming now to the question of appellate jurisdiction, I do not desire the creation of a Federal Court to which appeals will go from the High Courts of the federating Units, or at all events from the High Courts of the States without their leave. Nor is it desirable that individuals should, by raising the question of a constitutional point or of a law on a Federal subject being involved, be told to take a matter from the State High Court to such Federal Court. What is desirable is to have a Federal Court which will decide upon disputes coming under the following categories:—(*a*) as between Units or between a Unit and the Federal Government; (*b*) where the question of the interpretation of a federal law is raised in any Province or State Court of law, and the matter as a point of law is referred either by the Federal Government or the Government of a federating Unit, or by the High Court of a federating Unit, for decision by the Federal Court. In this connection, I may say that I am in agreement with the remarks which Sir Tej Bahadur Sapru made in his speech. I am quoting from his speech:—

> "But it is quite conceivable that certain issues raising questions relating to the constitution or the interpretation of federal law may arise in the course of private litigation either in British India or in Indian States."

Then he suggests:—

> "I therefore suggest that, whenever a question of that character arises in the course of private litigation—that is to say litigation to which private persons are parties—or in the course of litigation to which one of the parties is a private person and the other is a State, a case should be stated by that Court for the opinion of the Federal Court; and, when the opinion of the Federal Court has come back to the original Court which was seized of the case, that Court should give its final decision following the view of the Supreme Court or Federal Court."

Then he went on—I have one more quotation from his speech, because it absolutely supports the position and renders it clear in his own exceptionally clear language:—

> "Your Lordship will remember that, a few minutes ago, I referred to the revenue Courts which exist in India, and which exercise a very special jurisdiction in several Provinces. Now, the revenue Courts generally deal with questions of revenue between the State and the landlord, or with questions relating to rent between landlord and tenant. If, in any litigation arising in a revenue Court, a question of title is raised, the law provides that that Court will stay its proceedings to state a case on that particular point to the neighbouring civil Court and get its decision, and finally pass its judgment in accordance with the decision

on that particular point. That happens every day in several of the Provinces with which I am acquainted. What I suggest is some similar procedure in this connection."

Then Sir Sultan Ahmed interposed:—

"In the case to which you refer the word used is 'may,' not 'shall.' They may decide the point summarily or they may refer the matter to the civil Court for decision."

Then Sir Tej says:—

". . . . That has been found to be very convenient, and it has led to the avoidance of a great deal of unnecessary litigation and waste of time in India; and I do suggest that, in the interests of uniformity of authority, it is a procedure which, at any rate, might be investigated and examined, and if you find it satisfactory, then you should incorporate it there."

This is my position with regard to the appellate jurisdiction of the Federal Court in matters where any case, arising out of the law, which is federal is concerned—federal in the strictest sense of the term.

I should, My Lord, draw a very clear distinction between what I would call the Federal Court and the Supreme Court of British India. For the latter there are all those questions which were discussed by the eminent lawyers on the other side. They will be seized with regard to appeals in civil and criminal cases from British Indian High Courts on British Indian law, but not questions in which the interpretation of the constitution or cases which arise in Indian States are concerned. I should like really, as far as possible, that the Federal Court and all federal institutions should be kept clear of those different particular matters to which some members on the other side have referred.

As regards the Supreme Court, as thus distinguished, although it is a matter which concerns more or less, according to my conception, British India, perhaps, My Lord Chancellor, you might permit me to make one or two observations which are dictated from the experience I have recently had in my own Government when we were discussing how to provide some machinery by which appeals from our High Court could be decided so as to give complete satisfaction to the public. Our position is, of course, that there are no appeals to the Privy Council here. We have to provide a local machinery; and I take it that the problem now is the same with regard to India—as to what machinery you could provide for appeals from the High Courts of British India. We have had several considerations in mind. One was that we do not want to impair the position of the High Court and its Judges in the public mind as the highest judicial officers of the land. Secondly, we do not want, in creating these Courts of Appeal, to go one step higher with regard to salaries, which have repercussions on the whole scale of salaries in various other departments.

Hitherto it has been felt that the salary of a High Court Judge must be almost the highest. We thought of one or two alternatives. One was to make this final Court of Appeal really a Bench of five Judges of the High Court—of each High Court. Have I made myself clear?

Chairman: Yes. We used to have the same system—what we called the Exchequer Chamber.

Sir Akbar Hydari: Or that there should be a panel on which there were certain Judges of the High Court and certain other Judges, from which the final Court of Appeal should be selected. Now, applying that to the Supreme High Court for India, the suggestion which I want merely to throw out for consideration is that perhaps the Lord Chief Justice, who will have to be appointed in any case for the Supreme Court, might, in consultation with the Chief Justices of the different Provinces, make out a panel and a time-table for disposing of the final appeals of the whole of British India. If you did that, then each Province would be responsible for furnishing its quota of Judges for the Supreme Court for the final appeal.

Chairman: May I ask you one question on that? We had a very long discussion on this very point, which you have been good enough to raise now, at the Imperial Conference here last year, as to the manner in which we should select an Empire Court. One of the suggestions—I do not say it is a suggestion we are going to act on—was that each one of the Dominions should appoint a number of Judges—three or four—who would be Judges to serve on the Imperial Court. If there was a dispute between two of the Dominions, or between the home country and one Dominion, the idea was that Judges should be drawn from that panel who did not belong to either of the units who were contesting the matter. There is just one little difficulty, however, although it could easily be got over. How would you select Judges from the panel? Would it be by lot, or how?

Mr. Jinnah: It would be a lottery!

Sir Akbar Hydari: The Chief Justice of the Province might do it with his committee. I understand they have a sort of committee.

Chairman: The suggestion you make is a very interesting one, and I quite appreciate the value of it. But are you confining the suggestion merely to British India, or are you saying that not only each Province but each State should supply its quota?

Sir Akbar Hydari: So far as this Supreme Court is concerned, as it would deal only with British-Indian appeals, it should be only British India.

With regard to the Federal Court in the strict sense of the term—the Court which is going to have the exclusive original jurisdiction to which I have referred—it appears to me that the qualifications which will be required for such a Court are somewhat different from the qualifications necessary for those Judges

who would be sitting on the Supreme Court. The Judges of the Federal Court will have to have a considerable knowledge of constitutional law. There are, I believe, certain lawyers and certain Judges who are good criminal Judges or criminal lawyers, or who are good civil Judges and civil lawyers; and so, on the Federal Court, we will require good constitutional lawyers. We will want people who are more acquainted with administrative and political and constitutional conditions and the implications of the matters placed before them. The Federal Court, therefore, should be consittuted of Judges who are known to possess that particular kind of knowledge and experience, and possibly, in such a Federal Court, there might even be room for an eminent professor of constitutional law, though he may not have practised as a lawyer or had experience as a Judge. I merely throw that out as a suggestion. The tribunal has a constitutional rather than a purely judicial character and demands something other than experience in dealing with civil and criminal cases.

Chairman : I quite follow your suggestion that some professor of constitutional law might find a place in a Court of that kind, and I should like to ask you whether you think some well-known administrator might also find a place there.

Sir Akbar Hydari: If he commands the confidence of the Crown. The one essential should be character, independence and honesty. These are essential. If, in addition to that, though not having the technical qualifications of having been a lawyer or a Judge, he has the other experience, then, as I envisage the Federal Court as consisting of at least five people, I should say that it would not be undesirable to reinforce it even by a person holding that other qualification. I submit that only as a suggestion, Lord Chancellor. I am really going outside my province in these matters.

Then, if you constitute and make your Federal Court restricted to such questions, I do not see any reason why it is necessary really to remunerate them at the same rates or at rates corresponding to those which you would have for the Supreme Court. I should like to suggest that this might be possible. Really eminent men, towards the end of their career, who have retired at an early age, at the age of 59 or 55, from practice or from the High Court, in view of the fact that they would probably have earned their pensions or have made their pile, might be prepared to serve on the Federal Court in consideration of the dignity of the position which they might regard as a sufficient remuneration. Therefore, possibly we might make it in one sense economical but in the other sense not necessarily cheap. Perhaps the head of this Federal Court might be what corresponds to the Lord Chancellor presiding over the House of Lords. It might possibly be the President of the Federal Upper House, because he would have to decide questions as to whether a particular Act is *ultra vires* and so on.

My Lord Chancellor, these are suggestions which I have made which occur to me. My main point was what I said about the appellate jurisdiction, with regard to laws which are of a federal character—that I desire that the appeals in that case should lie to the Federal Court only in the way which has been suggested by Sir Tej Bahadur Sapru, as points of law which have been framed either by High Court or by the Government of a federating Unit, or by the Federation itself.

Mr. Sastri: I am rather puzzled over this discussion. I thought our friends who took part in the discussion visualised one body of Judges, sometimes deciding federal cases and sometimes deciding cases on appeal; but Sir Akbar Hydari apparently breaks new ground. He speaks of two distinct bodies, one altogether for federal subjects and another for British India. Do I understand that correctly?

Sir Akbar Hydari: Yes, that is so.

(The Committee adjourned at 1·20 p.m.)

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(SECOND SESSION)

7th September, 1931—1st December, 1931

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Manager, Newal Kishore Press, Bucknow
The Upper India Publishing House, Ltd., Literature Palace, Ammuddaula Park, Lucknow.
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K. L. Mathur & Bros., Guzri, Patna City.
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B. Parikh & Co., Baroda.
The Hyderabad Book Depôt, Chaderghat, Hyderabad (Deccan).
S. Krishnaswami & Co., Teppakulam P. O., *Trichinopoly Fort.*
Karnataka Publishing House, Bangalore City.
Bheema Sons, Fort, Bangalore City.
Superintendent, Bangalore Press, Lake View, Mysore Road, Bangalore City.

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*Agent for publications on aviation only.

INTRODUCTORY NOTE.

Proceedings of the Second Session of the Indian Round Table Conference in Plenary Session will be published separately as a Command Paper, to which this volume is supplementary.

The Introductory Note to the Command Paper explains, briefly, the procedure adopted by the Conference at its Second Session.

NOTE.

The following Heads for discussion were placed before the Committee by the Chairman:—

1. Strength and Composition of the Federal Legislature.
2. Questions connected with the Election of Members of the Federal Legislature.
3. Relations between the two Chambers of the Federal Legislature.
4. Distribution of Financial Resources between the Federation and its Units.
5. The Ministry and its Relations with the Legislature.
6. Distribution of Legislative Powers between the Federal and Provincial Legislatures, and Effect in the States of Legislation relating to Federal Subjects.
7. Administrative Relations between the Federal Government, the States and the Provinces.
8. The Federal Court.

It will be noted that: (*a*) the above Heads were not taken up by the Committee in numerical order; (*b*) Heads 5 and 6 were only partially discussed; (*c*) no discussion on Head 7 has yet taken place.

Detailed points for discussion in connection with each Head were drafted by the Chairman. They are printed in this volume at the commencement of the proceedings under the respective Heads.

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FEDERAL STRUCTURE COMMITTEE.

COMPOSITION:

Lord Sankey (*Chairman*).
*Mr. Wedgwood Benn.
*Major W. E. Elliot.
*Viscount Hailsham.
Sir Samuel Hoare.
Mr. H. B. Lees-Smith.
The Marquess of Lothian.
The Earl Peel.
*Mr. F. W. Pethick-Lawrence.
The Marquess of Reading.
*H.H. The Maharaja Gaekwar of Baroda.
H.H. The Nawab of Bhopal.
H.H. The Maharaja of Bikaner.
*H.H. The Maharaj Rana of Dholpur.
*H.H. The Maharaja of Rewa.
H.H. The Chief Sahib of Sangli.
Sir Akbar Hydari.
Sir Mirza Ismail.
Colonel K. N. Haksar.
*H.H. The Aga Khan (from 16th November, 1931).
*Dr. B. R. Ambedkar.
*Sir Maneckjee B. Dadabhoy.
*Mr. M. K. Gandhi.
*Mr. A. R. Iyengar.
Mr. M. R. Jayakar.
Mr. M. A. Jinnah.
Mr. T. F. Gavin Jones.
*Mr. N. M. Joshi.
*Pandit Madan Mohan Malaviya.
*Sir Provash Chunder Mitter.
Diwan Bahadur Ramaswami Mudaliyar.
Sir Sayed Sultan Ahmed.
Sir Tej Bahadur Sapru.
Mr. Srinivasa Sastri.
*Dr. Shafa'at Ahmad Khan.
Sir Muhammad Shafi.
*Mrs. Subbarayan.
*Sir Purshotamdas Thakurdas.
Sardar Ujjal Singh.
*Mr. Zafrullah Khan.

* Denotes new members.

Sir Manubhai Mehta acted as substitute in the absence of H.H. The Maharaja of Bikaner.

Lord Snell acted as substitute in the absence of Mr. Wedgwood Benn, Mr. Lees-Smith and Mr. Pethick-Lawrence.

Rao Bahadur Krishnama Chari acted as substitute in the absence of H.H. The Maharaja Geakwar of Baroda.

Mr. E. C. Benthall acted as substitute in the absence of Mr. Gavin Jones.

PROCEEDINGS OF THE FORTY-FIRST MEETING OF THE FEDERAL STRUCTURE COMMITTEE, HELD ON THE 26TH OCTOBER, 1931, AT 2-30 P.M.

HEAD 8.

THE FEDERAL COURT—(*continued*).

Mr. Gavin Jones: I enter into this discussion with some diffidence, for I am a layman, an amateur in the midst of experts. However, I feel towards experts in general in much the same way as certain Delegates expressed themselves about experts in another sphere a few days ago. We business men are accustomed to consult experts continually, and we have to view their opinions with discretion, because naturally professional bias is likely to come in, and we feel that we can view the matter in a more detached manner.

In dealing with this subject, I shall confine myself to general principles. We quite agree that there must be a Federal Court. We agree that the Federal Court should ordinarily be an appellate Court, but we think it should be an appellate Court for federal matters only. We agree that in certain cases, such as disputes between the Federal Government and the Units, it should have original jurisdiction.

We are of opinion that there should be a right of appeal from this Court for all matters to the Privy Council. Our reason for this is that, as many Delegates have already said, the Privy Council has great prestige. I may say that its prestige and authority are world-wide. An American lawyer once said to me that he wished that they had got in America a Court of Appeal anything like as good as the Privy Council in England. I think we would be making a great mistake if we were to discard this anchor of justice, to which nearly all the Dominions adhere. I think we would be making a mistake if we discarded it for India, anyhow at first. Moreover, I think I am right in saying that the Federal Court cannot be final in certain special cases. I believe I am right in saying that a British subject in certain matters, has a right of appeal to the House of Lords and the Privy Council.

As regards the appointment of the Judges, we are as insistent as anyone else that the Court should be absolutely independent of political influence, and, therefore, that the appointments must be made by the Governor-General. We also are of opinion that the salaries should be adequate and should be non-votable.

With regard to the selection of the Judges, both for the High Courts and for the Federal Court, I am in agreement with Sir Tej Bahadur Sapru when he says that there should be no reservation of appointments for any particular Service, but that the Governor-General should be able to select from the English Bar, the Indian Bar, and the Judicial Services. An appeal has been made that they should not be selected from the Judicial Services, and much

has been said on the question of the Judges being trained lawyers. I quite agree that they should be trained lawyers, but I see no reason why a Judge cannot be equally well-trained in a judicial service as at the Bar. A tribute has been paid to the Judges in the High Courts that have been selected from the Judicial Services; and although there may have been mistakes made, and Judges may have been selected who had not sufficient legal training, I think that this could be rectified by the better organisation of the Judicial Service. There is no reason why the Judges in this Service should not be adequately trained. I think I am right in saying that only in the British Empire and in the United States of America are the Judges chosen from the Bar. In the Latin countries, they are chosen from a trained judicial service; and I think that we should not discard the valuable field, for the selection of able Judges, that can be found in the Judicial Services. We must, I think, trust the selecting authority.

Now, Sir, a claim has been made that this Court should be a Supreme Court for appeals from the High Courts for civil and criminal cases. I strongly demur from this, because I feel that it would be very expensive and not so efficient, and it would be a dangerous experiment in which to involve the Federation to begin with. I asked Sir Muhammad Shafi how many Judges would be required if appeals had to be made to that Court for civil and criminal cases, and he put the figure at seven. Sir Sultan Ahmed has put the figure at eleven; and I obtained the opinion of a Chief Justice who has recently retired, and he put the figure, even with restrictions as to the appeals, at sixteen at least. Sir Provash Mitter has put the figure at from thirty to forty. Now, Sir, when there is such a variation in expert opinion, you must really view the matter with careful consideration; and I feel, knowing India as I do, that Sir Provash Mitter's estimate will not be far wrong, for undoubtedly a Supreme Court in India would encourage appeals. Undoubtedly the tendency in India is to appeal too far and too often. A very strong appeal has been put up by one or two Delegates that it is necessary on the grounds of expense to the litigant. On this question also, Sir, I made enquiries from a Chief Justice who has recently retired.

Mr. Jinnah: What was his name?

Mr. Gavin Jones : I am sorry; I cannot give the name, because he has not given me permission to do so; but I am quite sure that he would be only too glad to discuss the matter with the Lord Chancellor.

Mr. Jinnah: It is no use quoting a man who does not want to give his name.

Mr. Gavin Jones: Well, I dare say he would, but he has not given me permission to use his name, and I cannot do it. I am sorry. He said this:

> " On the question of expense, it would appear *primâ facie* that the expense of an appeal filed in India would be

less than that of an appeal filed in England; but strange as it may appear, this is not likely to be so. The expense of the record will remain constant. The appeal in India will be filed in some cases through Counsel instructed by solicitors, in others through Counsel not so instructed. In London it is through Counsel instructed by solicitors. In practice the expense will be higher in India even when the Counsel is instructed by solicitors. The reasons for this apparent anomaly are that the fees charged in India by Counsel with the qualifications that would be required in a Supreme Court of Appeal are very high. It is not at all unusual for Counsel appearing before a Chief Court, in appeals of importance, to receive daily fees of Rs. 1,000, 1,500, or even 2,000."

Sir Sultan Ahmed: Well, I wish it had been so.

Mr. Gavin Jones :

"Some of these appeals require, even before the most efficient and expeditious Benches, a hearing of ten days or more. It is practically impossible to hear, as a rule, more than three comparatively simple first-class appeals in less than two days. More complicated cases may take anything from three to twenty working days each. This is by no means an extreme limit. That is the hearing before strong Benches. Before weak Benches, it may be four times as long. In addition, there is a tendency in India to multiply the number of juniors. I have seen seven Counsel appear on one side in one appeal. I have made enquiries into the matter and have found that appeals in India have cost more than three times the amount to argue that they subsequently cost to argue before the Judicial Committee of the Privy Council. So far from giving the litigant more expeditious and cheaper justice, a Supreme Court is likely to give less expeditious and dearer justice."

I submit, therefore, that, when the matter is more carefully gone into, it will be found that a Supreme Court of Appeal for civil and criminal cases would be unwieldy, expensive, and in certain cases would not be final.

Now, Sir, as regards administration. The day-to-day administration of the Courts, I think, should rest with the Chief Justice; but when it comes to a question of finance, I cannot agree with Sir Tej Bahadur Sapru when he says that the control should be in the hands of the Federal Government unless, of course, the expenditure and the revenue of the High Courts is vested in the Federal Government—which is, I think, a proposal that was made by the Simon Report. If, however, the expenditure has got to be from the Provincial or Local Governments, then I think the control must rest with those Governments. To ask the Federal Government to order the Local Governments to vote supplies would be asking for a clash.

There is one point, Sir, that has not been made quite clear to me in the discussions that have taken place. That is, will a subject in a Provincial State have a right to appeal in federal matters against an Indian State Government? I think, in federal matters, it is only right that, if a subject of an Indian State has a right to appeal to a Federal Court, a subject in a Provincial State should also have that right. I would like that matter to be made clear. I think, Sir, I have nothing more to say on this subject.

Mr. Iyengar: Lord Chancellor, If I intervene in the discussion of this important question, amidst the array of distinguished legal talent which has been displayed on the subject, it is only for the purpose of giving a brief indication of what, in my view, from the constitutional standpoint, should be the purposes of the establishment and expansion of the activities of the Supreme Court in India. The principles with which we are concerned have been fully explained in your Note circulated to us and in your preliminary observations. They have been discussed from different points of view already here. There is first the proposal in regard to providing India with a Supreme Court, which would give her people a final Court of Appeal in their own country—more accessible and efficacious than has till now been provided by the Judicial Committee of the Privy Council. This is, if I may say so, purely a British Indian problem, though it must naturally be an integral part of whatever form of self-governing constitution is established for British India. There is next the question of providing a supreme federal judicial authority for the interpretation of the constitution, and for the administration and enforcement of federal laws in so far as they involve judicial intervention, or the exercise of advisory powers. And, lastly, there is the question to what extent the prerogative powers of the Crown to entertain appeals in Colonial cases, is, or can be, properly affected by the establishment of a Supreme Court in India exercising both supreme and federal jurisdiction. In considering this matter in the light of Colonial and Dominion parallels and precedents, there is one essential factor which alters the position and which has to be borne in mind. That is that, in respect of that important part of the Federation comprising the Indian States, there is no jurisdiction claimed by or conceded to the Privy Council to hear final appeals from any of them, whatever powers the States will concede to the Crown, for the building up of the new constitution, to be placed at the disposal of the new Federation—that is of the authorities and institutions created for the purpose of acting within the Federation. It, therefore, becomes necessary, in this behalf, for the States to assent to the establishment of a Supreme Federal Court in India to interpret the constitution and pronounce decisions on federal issues. This has been agreed to by them as set forth in the statement made by Sir Mirza Ismail on their behalf. The question whether, for the purpose of federation, this cession of powers should extend to their agreeing to the further jurisdiction of an outside authority

like the Privy Council, has been answered in the negative, and I think rightly. It would, therefore, from this point of view, be an entire anomaly if federal issues should be subject to the Privy Council's inherent jurisdiction, whatever it may be, where British Indians are concerned, and should be free from it where Indian States are concerned; and it might lead to a conflict of decisions on the same issues, which would be wholly undesirable. Moreover, speaking as a layman, I have been told that cession of jurisdiction on the part of the Indian States to British authorities, as distinguished from cession of territories, has raised difficulties, in some recent instances, of a very complicated character, where the source and authority of the Court are not purely British or British Indian; and it would not be the case in a Federal India where the authority of a joint Federal Legislature becomes established by constitution as well as by agreement with the federating Units.

You, My Lord, apparently contemplated the possibility of the Privy Council exercising jurisdiction in consequence of cession of powers by the Princes, and I have no doubt this would receive close examination at your hands. I have been informed in Madras that, in respect of an important project of port development, undertaken by the joint enterprise of two Indian States and British Indian Provinces which abut this port area, the question of joint ownership of this port and joint jurisdiction in its administration by a common authority and by a uniform set of regulations and laws has been a matter of legal examination, conferences and discussions for over ten years; and the matter is still being deliberated upon. It is hoped that final decisions will be made before the port scheme is actually completed in a year or two. At one stage, I have been informed, the proposal was made to establish what is called a condominium over the whole area of the port; but apparently that has now been abandoned, and further proposals are under consideration. There have also been cases in which jurisdiction in railway areas in Indian States has been ceded for certain purposes which are not entirely free from difficulties. Apart from the definite questions of sovereign rights and the wishes of Indian States in this matter, it seems to me the most proper course will be for the Indian States and the Princes to develop the prestige and authority of the Federal Court in India as India's own final national tribunal. From the standpoint of British India also, it seems to me equally clear that, whatever may be the extent and nature of the Prerogative rights of the Crown, India's final judicial authority should be established in India itself in such a national Supreme Court; and I do not think, having regard to the prestige and reputation of the great High Courts in India, we should at any time find difficulty in manning the Supreme Court or in maintaining it at the requisite standard. The history of the Dominions also seems to me entirely to support the view that the development of Dominion Status, as well as the proper evolution of a federal constitution, must necessarily eliminate, in practice, if not in theory, the jurisdiction

of the Privy Council. As Professor Keith has pointed out, the first breach in the traditional doctrine that an appeal lay to the Privy Council from the decision of any Colonial Court was made in 1900, when the Imperial Government accepted the demands of the framers of the Australian Federation that the interpretation and the decision of all disputes and constitutional issues arising from the establishment of the Federal Commonwealth should rest, not with the Judicial Committee of the Privy Council, as in the case of Canada, but with the High Court of the Commonwealth. The small extent to which appeals to the Privy Council from the Courts of the Australian States remained open was removed subsequently, in 1907; and in this manner, with the full and ungrudging assent of the British Government, the Australian High Court has been made the final arbiter of the interpretation of the Commonwealth Constitution. I need not refer to the disputes which has arisen over the constitution of the Irish Free State in this connection. All that I have to state is that the Imperial Government, in all these cases, has throughout acted on the principle of a ready acceptance of Dominion wishes; and I feel that the wishes of the Indian States, as well as of the bulk of my fellow-countrymen, are in favour neither of creating nor of keeping alive the jurisdiction of the Privy Council as part of the judicial constitutional machinery of the Indian Commonwealth after the establishment of the Federation. That is all I have to say.

Dr. Shafa'at Ahmad Khan: I shall confine myself only to two points—one, the question of the centralisation of the High Courts; and the other, the method whereby the fundamental safeguards can be imposed. I shall limit myself in this way partly because the ground has already been covered by very able and distinguished lawyers like Sir Tej Bahadur Sapru and Sir Muhammad Shafi, and partly because I am not sufficiently competent to discuss questions which require judicial training of the highest order and experience of the widest range.

I shall therefore deal with two points to which reference has been made by previous speakers. The first question is, should the High Courts be centralised? I differ from Sir Tej Bahadur Sapru on the question of the centralisation of the High Court. I do so, Lord Chancellor, with very great reluctance and with considerable hesitation, because I have the highest possible respect for the experience, the knowledge and the sound common-sense of Sir Tej Bahadur.

Before I deal with the question proper, I should like to make one or two points perfectly clear. In the first place, I should like to point out that, in the discussion of this matter, we are not concerned with the question of the appointment of the Judges of the High Courts or with their terms of office. On all these matters, I am in complete agreement with what Sir Tej Bahadur Sapru said in his speech. Again, it is not contended by me or by anybody that the administrative functions of the High Courts should be curtailed or withdrawn. I think it will be acknowledged

by everyone that a High Court cannot perform its functions efficiently and satisfactorily without exercising administrative functions. For instance, nobody has suggested that section 107 or the relevant portion of the Letters Patent should be curtailed. Now, while this is granted, it will be admitted by everyone that the administrative functions of a High Court should be open to discussion by the Legislature. I will not decide here which Legislature it should be, whether Provincial or Central. In other words, the High Courts should not be irresponsible in the exercise of their administrative functions. There must be control by some Executive and a power of control by some Legislature. Which Executive and which Legislature it is to be, I will, of course, discuss. Basing my arguments on these assumptions, the only question we have to decide now is by what executive authority such control should be exercised and in what Legislature these powers should be vested. In other words, should these powers be vested in the Central or in the Provincial Executive?

I do not deny the force of some of the arguments which have been used by previous speakers, with eloquence, ability and lucidity. There is, I admit, a danger inherent in any system which involves responsible government, that the High Court may be dragged into the arena of party controversy. I submit, however, that this danger is not removed or lessened by shifting the High Court to the Centre. So far as I have been able to gather, the local Legislatures have discussed administrative acts of the High Courts on various occasions. Many of the subjects discussed were in themselves eminently appropriate for public debate, though it must be admitted that some of the motions have not been debated in a proper spirit. The remedy for these defects, however, is to be found in amending the Standing Orders of the Legislatures and not in taking the entire control away from these bodies. There have been questions and discussions on the work of one Judge of the High Court—I will not mention his name—in my own Legislature; and there have been various questions in the different Legislative Councils with regard to the administrative functions of the High Courts. While there have been a few cases in which a certain amount of very unfair criticism has been indulged in, it must be said, on the whole, that the method adopted in dealing with these motions has been fairly satisfactory. This is indeed admitted by the Judges of the Bombay High Court, the Chief Justice and two Judges of the Allahabad High Court, and the High Court Judges of the Punjab High Court, who have said that their relations with the Local Government have been amicable and there has been so far no serious disagreement with the Legislative Council. So far as the Local Governments are concerned, in their Despatches to the Government of India on the Report of the Simon Commission, practically every Local Government emphasized the need of keeping the present relations of the High Court with the Local Government intact, without any modification and without any change. Only the official members of the Bihar Government

have suggested centralisation, and the Bengal Government also said that the High Court may be centralised if Courts in other Provinces are also centralised. Hence, the consensus of opinion of the various Local Governments is that the High Courts should remain in the position in which they now are, and also that there should be no disturbance or dislocation of the existing relations between the two bodies. I am therefore of the opinion that the rights which the Local Governments now exercise over the High Courts should be maintained, so far, of course, as their administrative functions are concerned. I need not go elaborately into the reasons for these views, but I hope you will allow me to summarise them as briefly as possible.

In the first place, if the High Courts are centralised, the Federal Government would not possess the local knowledge which would enable it to discharge its duties properly. The Local Governments are more familiar with the merits of candidates than the Federal Government can be. In the second place, there would be a serious risk of conflict between the Local Government, which must possess authority by virtue of its responsibility for the administration of a provincial subject, and the High Court, which will also continue to exercise the powers conferred upon it by section 107 of the Government of India Act. It is of the highest importance that the relations between the Courts and the Local Government should be those of mutual confidence and trust. The Local Governments must rely to a very large extent on the High Courts for the maintenance of a high standard of the judiciary in the Provincial Courts. These Courts cannot maintain such a standard without the support of the Local Government. One example will suffice. At present the High Court of Allahabad is empowered to remove a munsif without reference to the Local Government. If the High Courts are centralised, the question will naturally arise whether the Local Government will allow the High Court the exercise of these powers.

Sir Tej Bahadur Sapru: May I point out that, under the Bengal Civil Courts Act, the power of removal of munsifs is given to the District Judge and then to the High Court.

Dr. Shafa'at Ahmad Khan: I am only giving examples from the United Provinces.

Sir Tej Bahadur Sapru: That applies to Bengal, Assam, and the United Provinces and also, I believe, Bihar.

Dr. Shafa'at Ahmad Khan: Could the District Judge be removed?

Sir Tej Bahadur Sapru: Yes.

Mr. Iyengar: Yes, in all Provinces.

Sir Tej Bahadur Sapru: The Judge may be suspended?

Mr. Iyengar: Or suspended, yes.

Mr. Zafrullah Khan: There is power to suspend or submit for enquiry.

Dr. Shafa'at Ahmad Khan: I am using the exact words of the United Provinces Government to the Government of India. They must know what they are talking about. Again, the Oudh Chief Court has power to report or punish the ministerial staff of any Court subordinate to it. It is doubtful if the Local Government can allow any of its servants to be dismissed by an order of the Court which is under executive control by the Federal Government. Then, my third reason is that the new constitution will give the Ministry and the Legislature responsibility for the whole realm of Provincial administration. That range naturally includes the administration of justice. Even if the High Court is centralised, if the Council wishes to discuss the administration of the High Court, it will have no difficulty in doing so when the Demand for Grants for the ordinary administration of justice is presented to it. Many of the demands placed before the Legislature will continue to be based on the recommendations of the High Court. I can say, from my experience of the Council, that it is difficult to prevent a discussion of the High Courts, even after they have been centralised. In the next place, Lord Chancellor, it is in the local Legislature that complaints regarding delays in litigation, the location of Courts in various places and other matters are ventilated; and the procedure generally followed is that they are all passed on to the High Court, who, so long as they are under the control and administration of the Local Government, do pay attention to them. Then, there will be a risk of friction and aloofness between the Local Government and the High Court, and a most unfortunate and unseemly conflict might develop between the highest judicial body and the Local Government. In the High Court itself, amenities and scales of establishment would tend to be set up which would be out of proportion to those fixed for persons, departments and establishments somewhat similar in character. The personnel, discipline and working of the subordinate judiciary will be seriously affected by this change. Finally, if the High Courts are centralised, the expenses of the High Courts will have to be borne by the Central Government. If this is done, then the Judicial Stamps, I suppose, will have to be given by the Local Government to the Central Government; and if this takes place, it will be difficult for the Provincial Governments to pay their way, because in some Provinces Judicial Stamps form one of the greatest sources of revenue. For these reasons, Lord Chancellor, I am strongly of the opinion that the relation of the High Courts to the Local Governments should not be disturbed.

I will now take up the other point to which I referred, *viz.*, the methods which should be adopted for enforcing the safeguards. This subject bristles with difficulties, and one cannot be dogmatic about the remedy or the methods which one suggests; but I can start by saying that we are not concerned here with the content of the safeguards. This is a matter which is and will be dealt with by another committee. All that we need consider here is the method or machinery by which the safeguards should be enforced. What-

ever the safeguards may be, it is unquestionable that, if they are not to remain vague platitudes, and are intended to be enforced with the minimum of friction and delay and a maximum of effect, they should be laid down unambiguously and clearly. The agency or system or machinery, or whatever you may call it, for the purpose of enforcing these safeguards, will be the same with regard to all kinds of safeguards. The machinery will be, in the first place, the Central Executive. I use the words "Central Executive" in a much wider sense than that in which they have been used so far. The Central Executive, in the sense in which I use that term, includes the amalgam of powers, privileges, prerogatives and rights which the Crown will exercise over certain subjects—call them X—I will not mention the subjects. It will also include the powers with which the Federal Ministry will be endowed. The safeguards will therefore be enforced by this body. I am not discussing here which part of the Executive—the Crown or the Federal Ministry—will enforce the safeguards. An opportunity for that will, I hope, arise later on.

What, then, will be the chief categories of safeguards? In my humble opinion there will be three kinds of safeguards. In the first place, there are safeguards which affect interests such as the landlords and the European commercial community. In the second place, there will be safeguards which affect classes and communities, such as the Depressed Classes and religious minorities in India. Finally, there will be fundamental rights for the subjects of Indian States. On this subject I need say nothing. I have placed these safeguards separately, as I think there is a possibility of these rights falling short of those exercised by or granted to citizens of British India. If they are assimilated to the safeguards granted to the subjects of British India, nobody will be happier than myself. What, however, I should like to avoid is the possibility of our safeguards being brought down to the level of the safeguards which may be granted to the subjects of the Indian States. I am very much afraid that the fundamental rights which may be legitimately claimed by the British Indian subjects may be brought down to the level of those that may be conferred on the subjects of other States. Here I do not wish, and have never desired, to force the Indian Princes to grant their subjects fundamental rights of a particular kind or degree; but I am equally strong on the maintenance of such rights as are enjoyed now by or may be granted to the subjects of British India. My reason for separating these two kinds of safeguards is that, if they are mixed up, they will become so attenuated, they will be so watered down, as to become useless for all practical purposes. So, in order to preserve at least what I have got, and to stick to what I claim, I have decided it would be best, only for the purpose of classification, to have the category of safeguards of British Indians in a separate class by itself. My Lord Chancellor, I have made my position clear. I should like all safeguards to be perfectly alike; but if there is a danger of our safeguards being brought down to the level of those rights which

may be conferred on subjects of Indian Princes, then I should like to stick to what I have got or what I may get.

Having classified these safeguards, let me now indicate the method whereby they should be enforced. The matter does not apply to the safeguards as to the subjects of Indian States. I am leaving them completely out of account for the present—they apply only to the other two categories. There is one principle which governs and ought to govern all these safeguards, and it is this. The safeguards are fundamental. In other words, they cannot be amended, repealed or modified in any shape or form by anybody in India. No statutory self-governing body, no individual, and no Legislature, whether Provincial or Federal, can change them without a procedure which is clearly laid down and unambiguously expressed. What that procedure should be—whether they should be changed if the community, class or interest affected thereby consents, or whether some other method, such as the passing of a parliamentary Bill, amending these safeguards should be adopted —it is not for me to say here. What I should like to emphasise is that these safeguards should not be amended without the consent of the community concerned in a definite, prescribed, clear manner. How, then, should they be enforced? There are two agencies which I should like to indicate for effectuating this. In the first place, this can be done by the Governor-General in the case of the Central Government, and the Governor in the case of the Provinces; but as this question has not yet been properly discussed or exhaustively debated upon, I will assume that he will be the Governor-General. The power to be exercised by him must be exercised in all matters in which executive action is necessary. So far as the Governor of the Province is concerned, paragraph 6 of the Provincial Constitution sub-Committee's Report made the position clear, and I need say nothing about it. As regards the Governor-General, it is clearly essential to the efficacy of these safeguards that some power should be vested in him which will enable him to deal, not only with the laws actually made, but also with the executive action which is taken by or under authority of such law. The powers expressly conferred on the Governor-General for this purpose are to be exercised according to his deliberate judgment, after considering any advice which may be tendered to him by the Federal Ministry as well as by the Local Government and representatives of the class or community affected. Such a power for immediate action must be vested in his hands for the maintenance of rights guaranteed in the constitution. The right should be affirmative as well as negative. The class or community affected might draw the attention of the proper authority—here the Governor-General —to the violation of existing rights; or, if any change is needed in the working of safeguards, there should be a right of petitioning that authority and deciding the rights to be acquired by the community.

At what stage should the Supreme Court intervene? It is most difficult for me to say offhand and indicate the stage in a precise

manner. I may say, in passing, that I am alive to the danger of frivolous litigation if every aggrieved person of a particular class of the community is authorised to bring an action in the Supreme Court or petition the higher authorities for the enforcement of fundamental rights of his community or class. Some check ought most certainly to be imposed on the propensity of certain persons to litigation and contention. The only check I can think of is provided by laying down the rule that the Supreme Court can only intervene if it is petitioned, or if representation is made to it by a certain proportion of the representatives of the community in the Legislature. If two-thirds, for instance, of the total number of a particular class in the community apply or represent to the Supreme Court, then the Court should take action upon the petition.

Chairman: Of course, you had better say, having regard to the protection of minorities, two-thirds of those present and voting.

Dr. Shafa'at Ahmad Khan: Yes. As regards the exercise of authority by the Supreme Court in such instances, I think it would be conducive to the peace and tranquility of a Province if two-thirds of the representatives of a class or community voting, who are affected or think they are affected by a Bill, are allowed to ask the opinion of the Court on the validity of the Bill in question under discussion in the Legislature.

Mr. Jinnah: That means that two-thirds of the members shall be parties to the litigation?

Dr. Shafa'at Ahmad Khan: No.

Chairman: No. I think Dr. Shafa'at Ahmad Khan is speaking of the people in the Chamber.

Dr. Shafa'at Ahmad Khan: Yes.

Chairman: Supposing, for the sake of argument, there were 100 people representing a certain interest of the community, he said, if two-thirds wanted to go before this tribunal, they ought to have their way. Then I suggested to him that would have to be 66; but supposing 50 of them do not happen to be there through illness, it ought to be two-thirds of those present. It gives a much greater protection to all minorities.

Mr. Jinnah: I am much obliged to Your Lordship; but what I was trying to find out was this. Who will be in a position to move the Court—what number?

Chairman: Yes, I see what you mean. I suppose it would have to be a sort of representative action.

Dr. Shafa'at Ahmad Khan: It would have to be a representative action certainly. One man will be chosen on behalf of the others.

Mr. Jinnah: Two-thirds may not be able to stand the racket of the costs as parties.

Dr. Shafa'at Ahmad Khan: I agree entirely with the suggestion put forward by Sir Muhammad Shafi on the subject. If this is

done, it will prevent agitation, disorder and conflict. If, on the other hand, a Bill to which a particular class or community takes very strong objection, or to a part of which they take very strong objection, is proceeded with, and no action is taken until the Bill has passed into law, there is a possibility of the whole Province, and indeed the whole of India, being convulsed by agitation. I think, therefore, that the suggestion made by Sir Muhammad Shafi is very sound, practicable, and, if I may say so, very helpful. The Supreme Court will consequently be invoked in all cases of Bills or parts of Bills which violate, or which in the opinion of the community concerned, seem to violate, the fundamental law, as well as in all laws passed by the Legislatures and statutory self-governing bodies, which contravene these safeguards; but the Supreme Court cannot be asked to intervene in purely executive action, nor in matters which impose some positive duty on a body which has neglected to carry it out. Its function will be preventive. It will restrain a body—a Legislature, for instance, or self-governing body —from violating fundamental laws. For the positive work of protecting minorities, some other agency is needed, and that is apparently the Governor-General. The two will have to work together and will have to carry out the safeguards on principles to be determined. I acknowledge, Lord Chancellor, the difficulty in which the Governor-General will sometimes be placed. It is a very difficult position if he is asked from all sides to enforce safeguards of varying degrees of importance. It is a very difficult position for a Governor or Governor-General. I acknowledge the difficulty and I feel that in many cases it may be necessary to allow the Governor to get the matter decided by the Supreme Court, if the Governor is authorised to take the advice of the Supreme Court. I am fortified in this conviction by a provision on the Statute Book of Canada, which Your Lordship will find in section 4, repealing section 37 of the British North America Act, on page 238 of Newton's book. This is, in my opinion a very important and, I think, a very effective, measure for carrying out this idea, and with your permission I will read it:

> "Important questions of law or fact touching provincial legislation or the appellate jurisdiction as to educational matters vested in the Governor-General by the British North America Act, 1867, or by any other Act or law, or touching the constitutionality of any legislation of the Parliament of Canada or touching any other matter with reference to which he sees fit to exercise this power, may be referred, by the Governor in Council, to the Supreme Court for hearing or consideration; and the Court shall thereupon hear and consider the same. The Court shall certify to the Governor in Council for his information its opinion on questions so referred with the reasons therefor, which shall be given in like manner as in the case of a judgment upon an appeal to the said Court; and any Judge who differs from the opinion of the majority shall, in like manner, certify his opinion and his reasons."

I have already said that, if a question arises which is of a very controversial character, and on which the Governor-General himself cannot form an opinion, or on which he is reluctant to come to a definite decision, he may be authorised to refer the matter to the Supreme Court for its opinion. I believe I am right in saying that this has been acted upon on a number of occasions; and, as Your Lordship knows, the history of section 93 of the British North America Act of 1867 is full of instances of various minorities affected by the provisions of that section bringing actions to the Privy Council, and also, I think, to the seat of Government in Canada. I suggest, therefore, that this principle may also be applied in the case of safeguards which it will be the duty of the Governor-General to enforce.

Lastly, Lord Chancellor, I shall deal very briefly with the advisory power of the Supreme Court. I regard this power as the pivot of the entire system of safeguards. I believe such power has been exercised in England with eminent success, and it has worked excellently in Canada. It has given uniform satisfaction in a number of American States, and it was provided for in Mr. Gladstone's Home Rule Bills of 1886 and 1892, and in the Government of Ireland Act of 1920. It is embodied in a number of new constitutions of Europe. In my humble opinion, it is impossible to make any safeguards effective without investing the Supreme Court with advisory power. The risk of conflict between the constitution and Statutes of the Provincial or Central Legislature is so great, the inconveniences of a system under which the citizens cannot tell whether their obedience is or is not due to a Statute are so serious, that a more effective measure is necessary. How is an investor to judge if he may safely lend money which a Statute has empowered a Provincial or the Central Government to borrow, when the Statute itself may be subsequently withdrawn and may be declared unconstitutional? Hence, it is necessary that the opinions of Judges should be asked without waiting for these questions to arise and be determined in an ordinary lawsuit. It procures a judicial and non-partisan interpretation, and procures it at once, before rights, interests, and, let me add, prejudices, have been created. This is also the opinion of the Commission on the working of the Australian Constitution. This is what they say:—

> "In our opinion, the advantage of having the advice of the High Court upon the validity of legislation, before the community incurs the trouble and expense of acting upon legislation which may or may not be valid, outweighs the objection to any judicial pronouncements being made as to the validity of legislation except in regard to a concrete case in litigation instigated between parties."

If any community or class raises any objection to any section of a Bill, and if it is not thought desirable to hold up the entire measure owing to such an objection, a provision may be made in the Act that it shall not come into force until a date to be fixed by the Governor-General or the Governor as the case may be, and the latter may

refer the Bill then to the Supreme Court for its advice. The Australian Commission, in fact, recommends the alteration of the Australian Constitution and provision for the insertion of these amendments.

I will conclude by venturing to refer you to the Explanatory Note on the Report of the United Provinces Simon Committee, pages 330—370, which I wrote three years ago, and which is included in Volume III of the Report of the Simon Commission. I cannot go into details here, but I have quoted a number of laws and Statutes of different foreign Governments dealing with safeguards for minorities in that Note.

Mr. Jinnah: How will the Governor-General act?

Dr. Shafa'at Ahmad Khan: He will act as is necessary, or according to the advice he receives. How can he act excepting one way or the other?

Mr. Jayakar: Lord Chancellor, I am very grateful to Your Lordship for giving me an opportunity of making my observations upon some of the points which have been raised in the course of this debate. It is not possible for me, having regard to the short time at our disposal, to go into the whole field of discussion. I shall therefore confine myself to just a few points and make my observations under distinct headings, so that my remarks may be perfectly clear.

As regards the necessity for a Federal Court, there cannot be two opinions. Speaking of its jurisdiction, I agree that it should have an exclusive original jurisdiction; also an appellate civil jurisdiction; thirdly, an original criminal and appellate jurisdiction; and last, an advisory jurisdiction.

Under the first heading—exclusive original jurisdiction—I would make the first category of all cases arising under the constitution. Having regard to the fact that the expression " arising under the constitution " has caused, in several Statutes of the Dominions, difficulty about interpretation, and having regard also to the views which were so clearly expressed by some members of the minorities (notably by Dr. Ambedkar and Dr. Shafa'at Ahmad Khan), I think it would be advisable to placate the feeling of apprehension on the part of the minorities by inserting in our constitution, as falling under the words " arising under the constitution," the following five groups of topics.

My first group would be, as " arising out of the constitution," all matters relating to powers conferred by the constitution; (2) privileges granted by the constitution; (3) rights to be claimed under the constitution; (4) protection secured by the constitution; and (5) prohibitions contained in the constitution itself, apart from the Statutes of the Federal Legislature. I think it will be advisable, although the constitutions of the Dominions do not do that, to insert in our constitution, as illustrative of what " arising out of the constitution " means, these several headings, so that the questions about which the minorities are apprehensive, for instance, the

violation of fundamental rights, or the apprehensions of the commercial community, as regards discrimination, between sections of His Majesty's subjects, might be provided against. That would be the first group in which there would be exclusive original jurisdiction in the Federal Court.

My next group would be all matters which involve an interpretation of the constitution.

My third group would be all matters which arise, either between the States *inter se* or the Provinces and the States, or matters which arise out of treaties between the several Provinces and the States. I am not here suggesting—and I need not frighten the Ruling Princes—that the treaties of which I speak are the Treaties between the Ruling Princes and the Crown, although I may express a wish that, in course of time, as more confidence is created in the Federal Court, say in the next fifteen or twenty years, even those Treaties might pass under the review of this Court; but that is a matter for the future. The treaties of which I speak at the present moment are treaties between the several Units of the Federation—for instance, a commercial treaty which Bombay enters into with Madras for the protection of mutual rights. Such a treaty would fall under the group which I am suggesting.

My next group will be that all admiralty and maritime cases which arise in course of time should be referred to this Federal Court. At present, some of them are tried by the High Courts, and this causes considerable inconvenience. I therefore suggest that, wherever a maritime or admiralty case arises, it should be within the exclusive jurisdiction of the Federal Court.

My next group will be all cases where orders in the way of mandamuses, writs of certiorari, or any other prohibitory orders against an officer of the Federation are sought. That should be in the original exclusive jurisdiction of the Federal Court.

Now, the class which comes under the next heading, namely, matters arising under Federal Acts—that is, Acts of the Federal Legislature—I fear, cannot be made the exclusive jurisdiction of the Supreme Court, for under this category will fall some Acts of the nature that you suggested, Sir, in the early part of this debate. For instance, the Federal Legislature passes a commercial Act relating to bills of lading or bills of sale or the laws of inheritance relating to a particular community. It is a Federal Act in the sense that it is passed by the Federal Legislature; but we cannot so ordain things that, wherever a question relating to the interpretation of this Act arises, the trial shall take place at the Federal Court. We cannot have it because most of these questions will arise in the course of Provincial litigation or litigation in the Indian States; and you cannot, therefore, provide that, in all cases where questions relating to such Acts as are Federal Acts arise, they will automatically be taken to the Federal Court and tried by no other Court. I am therefore suggesting that, in such cases, we shall have to give the power of such cases being heard by Pro-

vincial and State Courts, with a right of appeal to the Supreme Federal Court. I am therefore putting these cases under an entirely different category. Now, there is a cross-division, which I wish to suggest at this stage, from the point of view of parties. I would suggest that, speaking generally, all cases of the foregoing character which arise between the Federation and a Unit or between two or more States or Units of the Federation, all cases between a State and its citizens or a Province and its citizens, and thirdly, all cases between citizens of different States or different Provinces, must be tried by the Federal Court. Fourthly, there may be cases, as have occurred in certain Dominions, where the inhabitants of the same State claim under the law of two different States—for instance, under a grant made by two different States; and cases which come under this category must be tried by the Federal Court. Lastly, I suggest a category for your consideration, and for the future consideration which may be carried on by this Round Table Conference or its Committees, as regards disputes arising in connection with all foreign nationals who may be living in India. I would submit that it would ease considerably situations like those which arise with regard to extra-territorial rights, and which are even now causing a considerable amount of difficulty in places like China, if we could agree at once that all questions which arise with reference to foreign nationals shall be heard by the Federal Court. This may enable India to acquire rights of trying foreign nationals, by transferring such power to the Federal Court; and it would inspire more confidence. If so, then I think we ought at once to concede that this power should reside in the Federal Court in the first instance and also as a Court of Appeal.

Now, as regards the next question which has been raised—as to giving Federal jurisdiction to other Courts—I am of opinion that we should proceed very cautiously. This Federation is a new experiment. The Federal Court is a new experiment. I would submit that we ought to be content for the present with having one Federal Supreme Court at the centre, wherever you locate it, with a jurisdiction, civil, criminal, appellate and original. But I would agree that the power should be given to the Federal Legislature to create additional Federal Courts, either in the Provinces or in the States, or to invest existing Courts, either in the Provinces or in the States, with Federal jurisdiction. That power may be given to the Federal Legislature and should be mentioned in the constitution; but I should be very careful not to invest with this Federal jurisdiction more than one Court at the centre, for the present, until we see how this experiment works. If the experiment succeeds, then the Legislature may exercise these powers which are given by the constitution, and create either new Federal Courts in the Provinces or States or invest with Federal jurisdiction existing Courts in the Provinces or the States. But I should begin this experiment very cautiously.

The next thing I would provide in the constitution, in connection with this matter, would be the power to give advice, namely,

a power of answering references made to the Supreme Court. I would provide for it in four cases. The first would be for the Governor-General to refer a case on any constitutional question for the determination of the Federal Court—the Governor-General either himself or in Council. If you think that, during the transitional stage, it should be the Governor-General alone, I have no objection, although I should prefer to make it the Governor-General in Council. The next case should be on reference at the request of the Federal Legislature, Lower or Upper House, with reference to Bills which are alleged to contravene some provision of the constitution, like fundamental rights affecting religion or the religious tenets of a particular community. On this point, I differ a little from the suggestion made by Sir Muhammad Shafi. I would not draw the President into the controversy at all. My experience is that these controversies sometimes become extremely bitter.

Sir Muhammad Shafi: May I just make one thing clear, so that there may not be any controversy about it? My main object is reference of those questions in those circumstances. Whether the reference is made by the Governor-General or the President is immaterial.

Mr. Jayakar: I would, in that case, make the following suggestion for the consideration of Sir Muhammad Shafi. I would make the President refer the matter to the Governor-General, who is often in a position to take a detached view; and the President would be saved from being drawn into what may become a bitter communal controversy. I would, therefore, suggest that the President should make reference to the Governor-General, and the Governor-General, after exercising his mind on it, should either make the reference or give some advice which lulls the embitterment. My third group would be that the Governor of a Province, either by himself or in Council, should have similar power of making the reference. My last group would be references by Judges of the Provincial High Courts; and I should welcome such a power, if the Indian States require it, for their superior Courts, of referring certain questions for determination by the Federal Court. How these questions will come up before the Provincial High Courts I shall mention presently.

Before I leave this topic, I should like to make one suggestion. I should give power, on the lines of section 78 of the Australian Constitution, to the Federal Legislature to make laws conferring rights to proceed against Federating Units. At the present moment, there are many States where this right is not allowed; and I would, with due submission, make this suggestion to some of the States where the right to sue the State is not allowed to the citizens of that State. I do not want to mention any names, because it would be invidious to do so. I quite agree that, in the more important States, this right does exist—the right on the part of the citizen to sue the State, as in British India you can sue the Secretary of State for wrong done by him or his agents. I would submit, for the consideration of those States where such a right does not exist,

that the working of the Federal Constitution would become considerably easier if such a right were conceded to the subjects of those States where it does not exist at present. As the question is somewhat delicate, I do not want to go further into details.

Then, coming to the important question as regards whether the Federal Court ought to have appellate jurisdiction in non-Federal matters, about which a considerable amount of controversy has been raised, I agree with the principle which was expressed by Mahatma Gandhi that India should have, at least as an ideal, if we can work up to it, a completely self-contained judicial system. I agree with that ideal, and I hope we shall work up to it speedily; but I fear that, having regard to the sentiments which have been expressed by the State representatives here, it would be an incomplete picture unless the States were prepared to fall into line and give a right of appeal to the Federal Supreme Court in non-Federal matters. Otherwise, the difficulty would be that there would be a right of appeal, so far as British India is concerned, in non-Federal matters, and as regards the Indian States there would be no right of appeal. I should therefore submit, for the consideration of the Indian States, whether by some kind of convention it is not possible to concede a right of appeal to the Supreme Court. But that is a matter for the States to decide. I do not wish to be dogmatic about this question. I only point out that this is either a complete system or not adopted at all. I cannot concede a state of things in federation where the Federal Court is the Court of final appeal as regards non-Federal matters, so far as British India is concerned, but, as regards the Indian States, it does not perform any such function at all. The difficulty will be exactly that expressed by Sir Akbar Hydari when dealing with this question from another aspect. Your Federal Court will gradually divide itself into two parts. Already signs are appearing that one would be called the " Supreme " side and the other would be called the " Federal " side. The " Supreme " side would be the final court of appeal for British India in non-Federal matters, and the " Federal " side would be so with regard to Federal matters for the whole of India. I fear it will divide the Federal Court into two divisions, which will diverge from each other; and then different standards will be expected from the Judges. Already Sir Akbar Hydari has stated that, with regard to Federal questions, matters of constitutional law will arise. He says that a man may be a good criminal lawyer and judge and a good civil lawyer and judge but may not know anything of constitutional law. Therefore, it was suggested—I think rightly—by Sir Akbar Hydari that, so far as the " Federal " side of the Court is concerned, you want in your Judges different kinds of qualifications from those which you require on the " Supreme " side of the Court. Therefore this division—this process of bifurcation—may increase gradually. You will have a " Supreme " side and a " Federal " side; and the cry will go up eventually, I am sure—why should the Indian States pay for the " Supreme " side of the Federal Court, which is purely a court of appeal for British India and not for the States? This, in my opinion, will ruin your

Federal Court. I am therefore anxious to make a beginning. As we advance, we shall go on developing. But if you begin with this distinction as to the Provinces of British India, my fear is it will ruin your Federal Court and possibly make the "Supreme" side of it more important, more attractive, and more popular. With regard to the matters which will engage the attention of this Court as an appellate Court for British India, I fear that this side of their work will engage the attention of the Judges to the exclusion of Federal questions. We have heard the figures given by Sir Provash Chunder Mitter, Sir Sultan Ahmed and Sir Tej Bahadur Sapru. If I may add my own experience, I suppose it is quite safe to take a figure of between 300 and 400 appeals in a year. If you take four Judges sitting the whole year—which means only six months, taking into consideration the time for which the Courts sit—then it will occupy four Judges for the greater part of the year; and I fear that, unless you have some provision by which matters can be expedited, your "Supreme" side will absorb most of the attention of the Court.

What I am anxious about is that we should not make two experiments at once. Our Federal Court is an experiment; we do not know how it is going to work. If you tack on to it, as it were, a Privy Council in India, I am afraid it will overweight the experiment, and I do not know how it will succeed. I am for caution, and would, therefore, begin with one experiment at a time. When it succeeds, you can by all means tack on another to it, and make your judicial system self-contained in India. Another difficulty I feel in this connection is this—that, whatever we do, we cannot do away with the jurisdiction of the Privy Council in so far as it represents the Prerogative of the Crown. I hope it is clearly understood that, however much we may try, we cannot do away with the Prerogative of the Crown to hear cases as the final court of appeal, either by giving special leave or as a matter of right under Orders in Council. I think I am pretty sound constitutionally when I say that, by both these methods—by special leave and by Orders in Council—the Crown can exercise this right; and the citizen has a right to go to the Crown. However much we may try, we have no power to make a constitutional experiment by which we would wipe out the power of the Crown or the right of the citizen to approach the Crown as a final court of appeal, either by special leave or by Order in Council. I am anxious we should not get into the controversy which resulted in Australia from the enactment of sub-section 2 (*a*) of section 39; and, in this connection, I invite careful attention to the observations of Their Lordships of the Privy Council, made in the well-known case of *Webb* v. *Outtrim*, reported in 1907 Appeal Cases, page 81. These remarks are very valuable from this point of view.

Chairman: Was that a judgment of Lord Loreburn?

Mr. Jayakar: I think so. I am anxious we should not get into all this trouble at the beginning of our experiment. I find in section 106 of the Constitution of South Africa—which was more ready,

if I may say so for federation than we can be for a few years—that they made an attempt to do something like this. They provided that no appeal should lie to the King in Council, and so on; but they were compelled to add to the section the following words; "Nothing herein contained shall be construed to impair any right of the King in Council which he may be pleased to exercise to grant special leave to appeal" and so on. I think it is futile to think of attempting to abolish this right of the Crown and its subjects by a mere stroke of the pen. It can be abolished by the growth of popular sentiment, I agree; but it is absurd to think of abolishing it by legislation, because you have not the power to do so. You may provide so, but any suitor can come before the Privy Council here and move the Council for special leave to appeal, and all your constitution is powerless against that remedy. I think, therefore, that this endeavour to do away with the jurisdiction of the Privy Council is somewhat futile, if I may say so. It can only be successful when public opinion has so far been educated that we do not want to go outside our own constitution for the sake of enforcing our rights.

So much for the right to deal with non-Federal questions. Coming to criminal jurisdiction, I would allow an original and an appellate jurisdiction. The original jurisdiction should be confined to offences against Federal Acts, and also all criminal offences in which foreign nationals are concerned. You will thus get rid of these difficulties which European criminals in India at present introduce, in regard to the jury being composed of so many Englishmen or so many Frenchmen, and so on. I see a possible way out of the difficulty if you transfer to the criminal side of the Federal Court all trials in which foreign nationals are concerned. I do not want to be dogmatic; I merely want to make a suggestion. Possibly in that direction we may seek an easy solution of the racial question relating to foreign nationals.

Sir Sultan Ahmed: If the offence is committed in Madras, would you bring all those concerned to the Federal Court?

Mr. Jayakar: I would leave it to the man accused to claim that right if he wants to be tried by the Federal Court, but I would give him the right to be so tried if he so desires it.

Mr. Zafrullah Khan: The right to compel witnesses and everyone else to come to Delhi?

Mr. Jayakar: Yes, if thereby the racial question will become more easy. I only make that suggestion for consideration.

Mr. Jinnah: Would you confine that to particular kinds of offences or is it to apply to any offence?

Mr. Jayakar: That is a matter for consideration. It might be confined to offences involving the death penalty, and so on.

Sir Sultan Ahmed: There is no racial question now in trials.

Mr. Jayakar: Seemingly not, but I am afraid there is a good deal of it yet under the surface.

Mr. Zafrullah Khan: If you will excuse the interruption, I should like to ask whether your suggestion that the Federal Court should have jurisdiction to try offences against Federal laws means offences by anybody.

Mr. Jayakar: At present I am dealing with foreign nationals. I would not necessarily make every offence against Federal law triable by the Federal Court, but offences against constitutional law should be considered carefully.

Sir Muhammad Shafi: What does Mr. Jayakar mean by offences against constitutional law?

Mr. Jayakar: Certain offences against the State, like waging war. I have not gone into details because there is no time; but I would certainly submit that some offences which at the present moment are offences against the State—offences like waging war or creating a rebellion—should be so dealt with.

Sir Muhammad Shafi: That is an offence under the ordinary Indian Penal Code.

Mr. Jayakar: At present it is the Indian Penal Code, but it will become a Federal law in the course of time.

Mr. Iyengar: The Penal Code will be separated into Federal and non-Federal sections?

Mr. Jayakar: Ultimately the criminal law will become Federal; at present it is not.

Chairman: Have you an Act in India like our Foreign Enlistment Act?

Sir Tej Bahadur Sapru: No, we have no Act like that, but the Foreign Enlistment Act has been extended to India.

Mr. Jayakar: I am speaking of such offences as affect the whole Federation. I am not in a position to state exactly offhand what those offences would be, but I should certainly remove them from the purview of Provincial Courts. It is my experience that these offences, when they are tried in the locality where they occurred, are not always judged in an atmosphere of dispassionate coolness; and I would, therefore, remove those offences—only just a few—like waging war or raising rebellion or those against military laws —it is a matter for further enquiry. I would take them into the hands of the Federal Court of criminal jurisdiction. Then, coming to the other class which Sir Muhammad Shafi suggested, namely, murder cases involving a death sentence, or transportation for life (which was added by Mr. Zafrullah Khan), I should very much like that to be done; but I fear, having regard to the cases which are likely to arise, it is not possible. I only speak of my own Court and of the side on which I practise. We have two sides in the Bombay High Court, one which deals with *mofussil* cases and one which deals with criminal cases which arise in the city. There are two different Courts that hear these cases; and, speaking from my knowledge of the *mofussil* cases, I should say that the class of cases where the final penalty of the law—namely, death or transportation

for life—is inflicted, may be taken roughly as two a week or eight in the course of a month.

Mr. Zafrullah Khan: Are you referring to the suggestion that Sir Muhammad Shafi and I made with regard to cases where an acquittal recorded in the High Courts is converted into a conviction on appeal?

Mr. Jayakar: I must have misunderstood you. I thought you referred to all cases where the extreme penalty was inflicted.

Sir Muhammad Shafi: I referred to both the classes of cases—cases in which a High Court converts an acquittal into conviction. . . . . .

Mr. Jayakar: Those would be very few cases.

Sir Muhammad Shafi: . . . . . and also ordinary cases of murder and so on.

Mr. Jayakar: Yes; I am dealing with that class now. I should very much like that to be done; but I fear that the numerous cases which will come up will make it impossible. I think, in Bombay, on the *mofussil* side alone, there will come up about 130 cases per annum; and, as regards all the other Provinces you can easily judge the number. I fear that it is not possible to do that, although I should certainly like that, in the case of the final penalty of the law, the Federal Court should have the final word.

Then I pass on to the next important question—namely, I should like some provision to be made in the constitution enabling Federal India, the British Indian Provinces and the Indian States to sue or be sued in their representative capacity. There may be difficulty about that, but I should like to have some provision in the constitution giving power to the Federal Legislature to provide that the Federation and the Units might sue or be sued in a representative capacity. This causes considerable trouble at the present moment. All that should be avoided by a distinct provision in the constitution.

Speaking of the Judges, I agree that they should be selected from the Bar and from the Judicial Service; and I would go further, and say that the provision which relates to appointments in the High Court—namely, that the Indian Civil Service should have a quota of one-third at least—should disappear. If they come in as distinguished members of the Judicial Service, I have no objection; but they should not come in *qua* Civil Servants—that is my objection. Therefore, if any Civil Servant has distinguished himself as a High Court Judge—and there have been many who have done so—I have no objection that he should be promoted to be a Judge of the Federal Court. The Judges should hold office during good behaviour, and the safeguards for their independence, I would submit, should be at least two, the first one of which should be on the lines of section 72 of the Australian Constitution, which provides that they are not removable except by the Governor-General in Council on an Address from both Houses in the same Session. I should make that compulsory. I do not want a kind of can-

vassing going on between two Sessions. I would provide for an Address from both Houses in the same Session asking for such removal for proved misbehaviour or incapacity, and not merely suspicions of the same. I would repeat that provision, because I think it contains a very valuable safeguard. My next safeguard will be something in the nature of the United States Constitution, Article III, Section 1—namely, that they should receive a fixed remuneration which should not be reduced during the time that they are holding office. In some constitutions we find that safeguard. I should reproduce it in the Indian constitution.

Chairman: I think there was a decided case only a few years ago which said they need not pay Federal Income-tax, which is a very wonderful decision!

Mr. Jayakar: Then there is one more provision which I would suggest for consideration—I have not made up my mind about it —whether it would be advisable, at least in the transitional period, to make their salaries non-votable. I merely make the suggestion that, in the transitional period, it might be a good safeguard, because a number of questions will come up for their determination, and possibly they would like to have a greater feeling of security. I therefore suggest for consideration whether it would be right to provide that, for ten years, their salaries should be non-votable. I am only making the suggestion as to whether it would give them more protection.

Then, the Chief Justice would have the power to prescribe rules as regards the admission of Counsel to practise before the Federal Court—which, I submit, is a matter of very great importance if you want to maintain the dignity and the prestige of the Bar which is to grow up in this Federal Court—and also as regards the conduct of proceedings, whether three Judges or more or less should hear appeals on constitutional points. In all those matters, which I do not want to go into, I should give the power to the Chief Justice to prescribe rules providing for the conduct of business, and also for the admission of Counsel to practise before the Federal Court. The appointment of the staff will also rest with the Chief Justice.

Then, as regards the point which Your Lordship raised—namely, the enforcement of its decisions—I think the point is very material when one comes to consider decrees of the Federal Court in its original jurisdiction. On its appellate jurisdiction there will be no trouble, because the court of first instance will execute the appellate decree; but the point becomes material in cases where the original decrees of the Federal Court are concerned, and in that case I quite agree that there should be some provision by which the enforcement would be carried out without hitch. I would reproduce the provisions in this connection of Section 111 of the South African Constitution and also Section 112. Section 111 provides that judgments and orders shall have the same force and shall be executed in like manner as if they were judgments of the High Court in that Province, and Section 112 gives power to the

Registrar of the High Court of that Province to issue a writ for execution as if it was a judgment of that High Court. We might do well to reproduce these two provisions. Of course, the point raised by Dr. Ambedkar, as to the ultimate repository of military power, is a question into which I do not wish to go, because it is not really a constitutional point. It is really a question of the working out of the Constitution, and I do not wish to go into that question at all.

Then, as regards the venue of the Court, my view is somewhat different from that of Sir Muhammad Shafi, and I would select a venue which satisfies these following tests: first, that it is central compared to the whole of India, not located in one part like Simla or Delhi. My next test would be that the climate should be such that work could proceed there for the whole year, and not merely for six months, as, for example, at Delhi. You cannot work at Delhi for the whole year. I would select a place somewhere in the centre, for example, Pachmarhi, which would be equally accessible to all parts of India, and which had an equable and temperate climate for the whole year. Delhi is not a place of that description. My last suggestion is that it should be at some place which is not the seat of the capital either of a Provincial or the Central Government. I wish this Court to be located at some place where there is no Executive Government to confabulate with. I am not suggesting anything wrong. I should certainly like to have this Court at a place where it is the most supreme power so far as that particular place is concerned—where there are no chances either at dinner or parties of confabulation. I should therefore put it in a place where there is no seat of Government either Provincial or Federal. That is my suggestion. I am sure it is possible to find such a place in India. The Court should be in a place which is absolutely neutral.

Sir Sultan Ahmed: And, apparently, inaccessible.

Mr. Jayakar: Now I come to one or two questions which arose incidentally. Your Lordship remembers that Sir Tej Bahadur Sapru dealt with some questions relating to the existing High Courts. I have one or two suggestions to make on that. I am referring to the power to appoint additional Judges. I know the harm it has caused. I do not wish to mention the details because they are not quite creditable to that part of my profession with which they are concerned. There should be no power to appoint additional Judges. I quite agree with Sir Tej Bahadur Sapru's suggestion. Then again, an absurd practice has grown up of hearing second appeals through a Bench consisting of only one Judge. That is absurd.

Chairman: I have never heard of that.

Mr. Jayakar: I think that ought to be put a stop to.

Sir Tej Bahadur Sapru: The consequence of that is that an appeal lies from the decision of one single Judge to two Judges; and again, if those two Judges differ, there is a possibility of a

case going up before a full Bench. Now, what the Judges of the High Court have done to counter that mischief is that they have raised the pecuniary limit of appeals going up before single Judges; but that is not a very effective way of doing it.

Sir Muhammad Shafi: In our Court what they have done is this, that when a second appeal of that type comes up, the Judge before whom it is placed calls in another Judge and makes him sit with him; then the two of them sign the Order.

Mr. Jayakar: In my part of the country, even the pecuniary limit is not prescribed, and I can recall most difficult questions of the law of inheritance and the law of contract being decided by a single Judge. What makes the matter still more obnoxious is that the right to appeal to a Bench of two Judges in My Province depends upon the Certificate which the deciding Judge has to give over his own judgment that it is a right case to be heard by two Judges. I should do away with this power altogether.

Chairman: I did not know that. That is a very important point. I think there is only one advantage in having a single Judge. That is that you cannot have a disagreement! But I do not know of any advantage beyond that.

Mr. Jayakar: It has caused a considerable amount of dissatisfaction among suitors; and if it is the aim of British Justice to create confidence, that must be changed.

Another point I want to touch upon here is somewhat controversial. I should like the question to be very carefully examined, which was started by Sir Tej Bahadur Sapru, as regards the relations between the Central Government and the High Court.

(*The Committee adjourned at 4-26 p.m.*)

PROCEEDINGS OF THE FORTY-SECOND MEETING OF THE FEDERAL STRUCTURE COMMITTEE, HELD ON THE 27TH OCTOBER, 1931, AT 11-0 A.M.

HEAD 8.

THE FEDERAL COURT—(*concluded*).

Mr. Jayakar: Lord Chancellor, Before I resume the discussion of the question at the point where I left off last night, there is one matter which I omitted to mention in the course of my speech yesterday, namely, appeals from the Federal Court to the Privy Council in federal matters. I have dealt with the question as regards non-federal matters; but, as regards federal matters, I am of opinion that the appeal to the Privy Council should be maintained for some time to come, especially as questions relating to minorities' and other fundamental rights granted by the constitution may come up frequently during the next ten years after India

has a Federation. I would give as a matter of course an appeal to the Privy Council in all cases decided by the Federal Court in its maritime and admiralty jurisdiction; and I think it would be advisable to repeat in our constitution provisions like those which are to be found in the South African Constitution in Section 106. I think that would be advisable having regard to the fact that our maritime and admiralty jurisdiction is still in its infancy. In all other matters, I agree with Sir Tej Bahadur Sapru and Sir Muhammad Shafi, that where the Federal Court certifies that the question is one which ought to be determined by His Majesty in Council, an appeal may lie to the Privy Council; and I think it would be advisable to repeat Clause 2 of Section 74 of the Australian Constitution, which, with your permission, I will read:—

> "The High Court may certify, if satisfied that, for any special reason, the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave."

I think it would be advisable to leave this question to the unfettered discretion of the Federal Court, without stating any limits either as regards the quantum of property or the nature of the question involved in the litigation. It might be that the quantum was small but that the point was very important, and *vice versâ*. I should therefore leave it entirely to the discretion of the Federal Court to grant a Certificate; and, in such cases, an appeal may lie to the Privy Council. This is apart from the special Prerogative of the Crown to admit appeals by special leave, or as a matter of right under Orders in Council. I am not at the present moment referring to that jurisdiction because I referred to it yesterday.

I will now continue with the point which I left half-finished yesterday, namely, connecting the Provincial High Courts with the Central Government. I am aware that the question is extremely controversial, and it is not unlikely that there are some communal aspects of it which may evoke communal controversy; but I wish that the question should be discussed absolutely in a dispassionate way, because it has occupied the attention of British Indian Courts for some time. I may mention, as a matter of history, that when the Statutory Commission went out to India under the presidency of Sir John Simon, this question was directly raised by some Provincial High Courts, and it engrossed so much attention, especially amongst the commercial community in India, that a representative body of commercial men, called the Associated Chambers of Commerce for India and Ceylon, submitted a memorandum to that Commission advocating that the Provincial High Courts might be linked up with the Central Government. Unfortunately I have not a copy of that memorandum here, so I cannot refer to it; but I will mention one or two anomalies which have got to be attended to in the consideration of this question. The position of the Provincial High Court is somewhat peculiar. For instance, the High Court Judges are appointed by His Majesty the King in England. Additional Judges are appointed by the Governor-

General in Council. The terms of the appointment are regulated by rules which are made by the Secretary of State for India. Thus the High Courts are connected with His Majesty, the Secretary of State, and the Central Government. Curiously enough, they also maintain another tie with the Provincial Governments. Just to mention a few details, in administrative matters affecting the High Court, the Home Department of the Local Government is supreme. In important matters directly affecting the High Court, it is the Governor of the Province who attends personally to this portfolio. Lastly, to complete the anomalies, financial matters affecting the High Court are looked after by the Finance Department of the Provincial Government. You see the anomalies there: the High Court Judges hold their appointment from the King; their terms of service are regulated by the Secretary of State; and in the day-to-day administration of the High Court, on important questions like finance and other matters, they are subject to the jurisdiction of the Local Government in three different Departments. Sir Tej Bahadur Sapru asks me to point out that, under Section 105 of the Government of India Act, Clause 2, temporary Judges are appointed by the Local Governments. The Section reads as follows:—

> "On the occurrence of a vacancy in the office of any other Judge of the High Court, or during any absence of any such Judge, or on the appointment of any such Judge to act as Chief Justice, the Governor-General in Council in the case of the High Court at Calcutta, and the Local Government in other cases, may appoint a person, with such qualifications as are required in persons, to be appointed in the High Court, to act as a Judge of the Court."

That adds one more anomaly to the list which I have submitted. I submit, therefore, that this question requires to be very carefully examined. I know there are difficulties on both sides, some of which were pointed out by Dr. Shafa'at Ahmad Khan in his speech; but the question has agitated the mind of the Provincial High Courts for a long time. I may be permitted to quote just two paragraphs from a Memorandum which was submitted to the Simon Commission by one of the Provincial High Courts, which shall be nameless during this discussion. It sets out the case very clearly, and I will just read an extract:—

> "It has always been a cardinal principle of the administration of British Justice that the Courts should as far as possible be kept aloof from political strife and exigencies. When the Reforms are extended in British India, there will probably arise many questions of importance affecting the constitution and the rights and liberties of the people which will require determination by the highest tribunals of the land. Political parties or political leaders may bring their disputes before the Courts of law, and the decisions of the Courts may not be liked by them. It is essential to the independence and impartial administration of justice that

the judicial department should be removed from the influence of the Legislative Council and should not be subjected to attacks by its members. Whatever measures may be designed to secure that the distinction between the administrative and judicial functions of the Judges should not be confused, and that the Judges should not be hampered in the latter by their executive subordination to Local Government or the Council, there are indications of the danger of their judicial functions being indirectly hampered by purely party considerations if further powers are granted to the Legislative Council over the judicial department."

Now, this is very important:—

"The Judges consider that it is of the utmost importance that steps should be taken at this stage to secure that the Courts shall not in any way be subject to party influence, political or personal. Powers of appointment, in particular, are liable to affect the independence and efficiency of the judiciary. It will be admitted that a Judge whose appointment rests not upon his technical qualifications but upon political or party considerations cannot be wholly independent in the discharge of his judicial duties; and he is apt to mould his views to suit the wishes or the policy of the party or the persons to whom he owes his office. Financial pressure may also be used to indicate displeasure with the independence of the judiciary."

I cannot do better than quote these two passages, which sum up the argument for the centralisation of this particular department. I have no dogmatic views on the matter; all I say is that this question should be examined very carefully in a dispassionate way. I am aware of the difficulty, which was pointed out by previous speakers, that either you have to transfer the administrative and financial part of the question entirely to the Central Government, or you repeat the anomalies under which the Calcutta High Court works at the present moment, where the financial connection is with the Provincial Government and the administrative control with the Central Government. My plea is that the question should be more carefully examined, because I hold the view, which is based upon the experience of the High Court to which I belong, that from very nearness and vicinity many questions assume a somewhat bitter character. An argument was adduced by a previous speaker that the same thing would happen if you transferred the High Court to the Central Government; but I think it would be so to a much lesser extent, because it is a case eminently coming under the principle that familiarity breeds contempt. If you transfer these Courts to the Central Governments, local influences to that extent will cease to operate. Controversies which assume bitterness owing to their communal or other character, if they are located in a small area are always more bitter than if they are spread over the whole of the country. I am therefore making out a plea that this question should be dispassionately

examined in the light of all the material which is available on this question. That finishes the third question relating to the present High Courts.

Reference has been made to the question of the age-limit. I think the age limit can very safely be raised to 65. I am aware of many cases where very qualified and eminent Judges have been lost to the High Court owing to the rule that they have to retire at 60. I know that, in the climate of India, somnolent habits may be induced after 60 on the part of people who sit on the bench, but I think those are exceptional cases. On the whole, I think the age can certainly be raised to 65. I think 70 would be a little too old. I suggest 65 years of age for compulsory retirement from the Supreme Court.

Then there is only one point I would like to touch upon before I finish this part. That is the point which was raised by Mr. Zafrullah Khan. It is a very important question about which I have some difficulties. He said that matters, however small, in which question of a law being *ultra vires* are raised in the lowest Court, should be taken at once to the higher Court without passing through the intermediate stage. I have some difficulty about accepting this principle. The difficulty which I feel is this. At this stage, the plea which is raised of *ultra vires* can only be accepted on the pleadings, because it cannot be gone into. If the Court has no jurisdiction to hear that particular case, you cannot give it jurisdiction by consent. Therefore you have got to take the plea on the state of the pleadings as they are disclosed at that stage. I have some experience of such pleas, because in Bombay we have legislation which bars, either completely or in a modified way, the jurisdiction of Municipal Courts. It just occurs to me to mention one instance. We have an Act in India which deals with cases in which agriculturists are parties. An agriculturist is defined as a man who earns his living by agriculture, or whose agricultural income is more than his non-agricultural income. Such cases cannot be tried in the ordinary way by the High Court. I know it is a wholesome provision, but very often it leads to dilatory tactics; because, if a suitor is not able to pay, all he has to do is to advise his Counsel to put in his written statement a plea that this Court has no jurisdiction to try the case because the defendant is an agriculturist. Owing to the fact that the Court is unable, at that stage, to go into the merits of the case, the result very often is that it holds up the litigation. The difficulty is that, at this stage, you cannot go into the full merits of such a contention; you have got to take it from the pleadings or on a certain amount *of primâ facie* evidence in the case. Therefore, I believe that the result of the suggestion made by Mr. Zafrullah Khan would be that, in the hands of unscrupulous clients, and unscrupulous Counsel too, it would be used as a dilatory device for postponing the final day of judgment. I submit, in that case, the proposal made by Sir Tej Bahadur Sapru is sounder, namely, that a case may be stated for the consideration of the highest tribunal, and

then the highest tribunal may be called upon to deliver its opinion on the reference. That, I think, would be a far more useful way of dealing with this difficulty. Secondly, Sir, the proposal made by Mr. Zafrullah Khan only saves one Court. His proposal was that, instead of the Munsiff or the lowest subordinate Judge trying the case, it should be tried by the District Court. Well, that only saves one Court, because the immediate Court higher than the Munsiff would be the District Court.

Mr. Zafrullah Khan: And also the single Judge hearing in the High Court; it would save that appeal.

Mr. Jayakar: I am in complete agreement with that part of your proposal. I am dealing now with the other one. Therefore, I think, if you really want to save unnecessary litigation and time, the better plan would be to have some provision under which a case may be stated and brought up before the highest tribunal immediately. Of course, that will also lead to dilatory tactics; but that is unavoidable to a certain extent. As you pointed out, Sir, another difficulty is that the determination of this question may depend upon facts. Some Court has to ascertain the facts upon which very often will depend the point of *ultra vires* or anything that arises of that nature. Therefore, my submission is that the proposal made by Sir Tej Bahadur Sapru is more acceptable.

One point, I understand, caused considerable misapprehension in my speech of yesterday. I was told that I was not quite clear as regards the jurisdiction of the Privy Council in non-federal matters. Well, what I wish to say—I do not know whether I was clear yesterday—is that I am quite aware that it is desirable to give to the Federal Court, in non-federal matters, an appellate jurisdiction. My point was this, that if the States could to-day play up and agree to the exercise of such a jurisdiction over their courts, in non-federal matters, by the Federal Court, I would have no objection at all; in fact, I would begin, as I said yesterday, by giving to the Federal Legislature power in the constitution to invest the Federal Court with appellate character in non-federal matters. All that I wished to point out was that, until the States have made up their minds to agree to this right of appeal being given to the Federal Court in non-federal matters, the possibility is that the Court will confine its appellate character only to British India; and my point was that the result of that will be that your Federal Court will split into two sections, which will gradually go on drifting from each other. You will develop one side of it which is a purely appellate court dealing with British India, and the other of a federal character. Necessarily the group of questions which come up before the Supreme Court—namely, the appellate part of it dealing with non-federal questions from British India—will absorb more and more attention and will become more and more popular; and my fear is that it will swamp, in certain cases, the federal part of that Court. But if to-day the States could be induced in some way to come up and give this appellate jurisdiction to the Federal Court in non-

federal matters, I am entirely in agreement with the proposal that we should give to this Federal Court another side—namely, the Supreme Court side dealing with appellate questions from all India, from all the Provincial and State Units, in connection with non-federal appeals.

There is one more point, with which I shall conclude, Sir, and that is as regards the criminal jurisdiction of an appellate character. I think I omitted to mention that point; and my opinion there is that in all criminal cases there should be an appeal to the Federal Court under some provision which may be made analogous to what you used to call in your country " Crown cases reserved ", by a kind of certificate given either by the High Court or by the Advocate-General or the Attorney-General (we call him the Advocate-General in our country); and in all cases where the Court or Advocate-General is of opinion that a point of sufficient importance arises, such cases may be heard in appeal by the Federal Court in criminal jurisdiction. Of course, my acquaintance with the Crown cases reserved is somewhat old; I have not refreshed my knowledge of that subject since my student days; but some procedure analogous to that might be provided for, and in those cases where the High Court or Advocate-General certifies that cases are fit to be tried in appeal by the Federal Court, such cases might be tried by that Court.

I have nothing more to say.

Chairman: With regard to Crown cases reserved, they are very seldom reserved now-a-days since the passing of our Criminal Appeal Act, although there is still power to do so. The Criminal Appeal Act gives the same sort of power now that the Crown cases reserved had. But there is only one point in addition to what you have said. In addition to the Advocate-General—that is the Attorney-General—the Judge who is trying the case can state a case for criminal appeal. I have done it myself four or five times.

Mr. Jayakar: That may be done.

Mr. Jinnah: Sir, the question which we have to approach is one which must be approached from a very different point of view than it has been in the past. I do not think it is going to help us very much to examine this question in the light of various enquiries that have been made in the past, for the simple reason that we are proceeding now on the basis of all-India Federation. As you know, so far as we have proceeded, it still remains a little sketchy, and whether it is going to materialise or not is still an open question; but if you look at it on the hypothesis of the all-India Federation, so far as we have proceeded, then we are face to face with three questions. The first is, so far as the federal matters are concerned, should those matters vest in the Federal Court? Now, I will not take up the time of this Committee with this question —namely, that any question that relates to the Federal Constitution or arises out of the Federal Constitution should vest in the Federal Court—and I shall categorically answer the questionnaire on those points. But there is a difficulty that presents itself to

me when you come to discuss the vesting of the jurisdiction in the Federal Court with regard to federal laws. When we talk of federal laws, it is somewhat difficult to understand what are the federal laws so far as we have proceeded with the federal subjects. I find here in front of me a list—it is a pretty long list—where the cases will arise. Take, for instance, the railways. Any laws affecting the railways or any offences or any civil cases arising with regard to transactions in the transport system, and so on—I have got a very long list in front of me—will all those cases be federal laws or not?

Chairman: Might I just ask you a question? What is your practice in India with regard to through rates on railways? For instance, supposing a trader wants a through rate—I am not so familiar with the Indian railways as I am with the English—a through rate, we will say, from town A to town B, which goes over three different systems of railways. Is there any tribunal that he can go to which will enable him to get a through rate, or will enable him to say that the through rate which they charge is excessive?

Mr. Jinnah: No, there is no tribunal that he could go to. It is purely an administrative matter.

Sir Tej Bahadur Sapru: No, there is the Railway Rates Tribunal.

Mr. Iyengar: That is an advisory body.

Mr. Jinnah: It is not a tribunal at all. There is no tribunal. That is entirely an administrative matter. You have got to deal with the Railway Companies. There is no enquiry about it. There is no evidence. There is no rate ascertained at all. It is really a matter of business transaction pure and simple. There is no tribunal of a judicial character.

But that was not what I was thinking of. Take, for instance, offences under the Railway Act. I send my goods from Bombay to Calcutta, and my goods are damaged. Well, I have a remedy against the Railway Company. I file a suit under the Railway Act. Well, that is federal law. Not only that, but we have not yet ascertained what will happen to the other laws, such as the Transfer of Property Act, the Civil Procedure Code, and numerous Statutes which are all-India Statutes. What will happen to those Statutes? Where will you go with regard to those cases? Which Court will you go to? Take, for instance, the criminal law, the Penal Code and many criminal Statutes. Where will you go with your all-India Statutes? Therefore, it seems to me, Sir, that it has been assumed all along that the Federal Court will be vested with jurisdiction, not only relating to the constitution or matters or disputes arising out of the constitution, but also relating to federal laws.

Sir Maneckjee Dadabhoy: If they are not federal Statutes, will not the ordinary Court have jurisdiction?

Mr. Jinnah: Yes; but it is assumed—I took it from the opening speech of Sir Muhammad Shafi, and you have proceeded on this basis—that the Federal Court must be vested first with the jurisdiction to deal with matters relating to the constitution and matters arising out of the constitution; the Federal Court should have exclusive appellate jurisdiction with regard to all federal laws; further, that the Federal Court should take the place of the Privy Council, except that the Privy Council should have the privilege of granting special leave, and, lastly, that it also should assume criminal jurisdiction. What I was pointing out was this. We must try to separate these four points. I have no difficulty in understanding this part, that the Federal Court must be vested with jurisdiction to deal with matters relating to the constitution and arising out of the constitution; but when you come to vest your Federal Court with a jurisdiction with regard to federal laws, then it presents to me an enormous difficulty. Further, apart from the difficulty I have mentioned, are the Indian Princes and the States agreeable, so far as their States are concerned, that, for any questions relating to federal laws which may arise, the Federal Court should be the Supreme Court? I say that you will have very nearly 50 per cent. of cases which will arise out of federal laws.

Then, I do not see what you are going to do with the other laws. So far we have been trying to classify them as Central subjects. What will you do with them? Then, we go a little further. Another difficulty presents itself to me, namely, that when your Federal Legislature is set up—and we will take it that the Civil Procedure Code is not Federal law so far as we have proceeded in classifying the subjects—supposing your Federal Legislature, when it is set up, makes an amendment in the Civil Procedure Code, will it become federal law?

Sir Tej Bahadur Sapru: It all depends on what you mean by federal law. What do you mean by federal law?

Mr. Jinnah: That is what I want to know from you, because you said that federal laws must be vested in the Federal Court.

Mr. Jayakar: Appellate jurisdiction.

Mr. Jinnah: Yes, of course; it cannot be original jurisdiction. What do you mean by federal laws? That is what I am trying to examine. There are certain laws, as you have classified them now, under the heading of federal subjects. There is no question that they are federal laws. I find this difficulty. What will happen when your Federal Legislature is set up and undertakes an amendment of that particular Statute? Take the Transfer of Property Act. Take the Civil Procedure Code.

Sir Tej Bahadur Sapru: That will not be federal law.

Mr. Jinnah: Where will it be?

Sir Tej Bahadur Sapru: Under a Central subject—unless you abolish the distinction between Central and Federal.

Mr. Jinnah: It seems to me, if you are putting the subjects in this difficult position, that you are leaving out a large body of cases which will arise out of these various Statutes which you have called Central laws or Central subjects, and with regard to which the final Court of Appeal in India would be the High Court or High Courts, and the appeal would lie to the Privy Council.

Sir Tej Bahadur Sapru: No, no.

Mr. Jinnah: Where will it go?

Sir Tej Bahadur Sapru: It will go to the Supreme Court, in the exercise of its jurisdiction on non-federal matters.

Mr. Jinnah: I am talking of non-federal matters.

Sir Tej Bahadur Sapru: So am I.

Mr. Jinnah: Where will it go?

Sir Tej Bahadur Sapru: To the same Court on the Supreme Court side—the non-federal side.

Mr. Jinnah: In that case, you want to vest your Federal Court with jurisdiction with regard to the constitution, federal laws, and appeal against the High Courts, in the place of the Privy Council?

Sir Tej Bahadur Sapru: That was the suggestion.

Mr. Jinnah: And criminal appeals?

Sir Tej Bahadur Sapru: In a very modified manner.

Mr. Jinnah: It seems to me, then, that you at once create *this* difficulty. What about the cost? Who is going to pay the cost? There are certain Units, such as the Indian States—they are not going to submit to the appellate jurisdiction of your Federal Court *qua* matters other than those arising out of the constitution or federal laws. That is the first point. If you say the costs are to be apportioned, remember that it will be a very big Court. It will not be a small Court. It will be a very expensive Court and the question of cost will arise.

Sir Maneckjee Dadabhoy: The cost of maintenance of the Court?

Mr. Jinnah: Yes. The next question is this. Is it really not a difficult thing to work, when you have a Federal Appellate Court, having the jurisdiction that you suggest, to which one third of India does not submit? It seems to me that it is bristling with difficulties. Personally, I have no hesitation in saying that I have always been a supporter of the Supreme Court, and I have always maintained that it is high time that we had a Supreme Court in British India. The question has been debated more *than once* since 1921, and even before that it was discussed, and we pressed in the Legislature more than once that a Supreme Court should be established; but then we were contemplating a very different state of things; we were then confining our attention only to British India, and the question did not present itself in that difficult aspect which it now bears.

My suggestion, therefore, is this. You have given us a conundrum, and that conundrum is to try to materialise an all India Federation. This is a corollary of that conundrum, and therefore my suggestion is this. You may be startled when I say that you have to divide this thing into three parts, and keep them separate. I would suggest that we should start with the Federal Court on the hypothesis that we have solved this conundrum of all-India Federation, and confine ourselves to giving jurisdiction to the Federal Court only in matters relating to the constitution and arising out of the constitution. The personnel of the Court will be qualified in those constitutional matters as constitutional lawyers, because the questions dealt with will arise, as we have contemplated, between the Federation and the Units and between the Units *inter se*. Further, I maintain, Sir, that it should be open to any subject, if his right is invaded or attacked—relating to the constitution, of course, or arising out of the constitution—to go to the Federal Court direct.

Here I might mention the subject which was discussed with regard to the invasion of the rights of any interests or of any community or of any class—relating, of course, to the constitution or arising out of the constitution. The constitution will be a Statute; and if any right is invaded or attacked or infringed by anybody, it should be open to the subject to go to the Federal Court.

Chairman: You would include in that, I suppose, any case where there was a commercial or religious discrimination?

Mr. Jinnah: Yes; and here I would observe that I do not think any useful purpose would be served by getting an agency to refer the matter to the Federal Court. If my right is invaded or infringed, I would suggest—the suggestion has already been made, and I have no special objection to that at all—that if two-thirds of the members belonging to that interest or class or community object, then that measure ought to be suspended forthwith; and it would then be open to one or two persons belonging to that class or community or interest at once to file a suit, and a limit of a month or two months could be fixed for that purpose. Let any subject who is affected file a representative suit, and let that question be decided by the Federal Court forthwith.

Mr. Jayakar: Even before the Bill has become an Act?

Mr. Jinnah: Yes.

Mr. Iyengar: You would file a suit—what for?

Mr. Jinnah: That is *ultra vires*.

Mr. Iyengar: How can it be *ultra vires* before it has become an Act?

Mr. Jinnah: If a Bill is introduced, and if a member of any community says that it violates the fundamental principles of the constitution, and therefore it should not be proceeded with, what is the position? For instance, a Bill may be against a religious usage or religious practice, or infringe somebody's religion. The

Bill is introduced. The particular class affected object to the Bill on the ground that it infringes their religion or religious practice or usage, and that therefore the Legislature has no power to enact this measure. Now, do you want to wait until the Bill becomes an Act? I say "No". Then, it is suggested that somebody else should be constituted the agency to make a reference to the Court. I say "No". It is my right, and my right is going to be infringed or invaded. I say that Bill is bad *ab initio*, because it infringes fundamental rights, and I say that Bill ought to be suspended; but, in order to show that the objection is not a frivolous one, you can ask for a majority of two-thirds of the community affected. That gives you evidence that serious objection is taken to it and the objection is not merely a frivolous one.

Mr. Iyengar: But that may be a political vote, and not a vote on the merits.

Mr. Jinnah: It may be anything. You will never get perfection, and you are now asking for perfection. I say that if two-thirds of the members of a community in the Legislature seriously in their representative capacity, assert that this Bill infringes their religion or their religious usage, then that is a *bonâ fide* objection, and I am satisfied; and, that being so, I say that that Bill ought to be suspended in order to give them an opportunity to test the question before the highest tribunal. You can say that, within two months or three months, if you like.

Mr. Jayakar: But the trouble may be unnecessary, because the Legislature may not pass that Bill.

Dr. Ambedkar: Or it may emerge in a form to which there is no objection.

Mr. Jinnah: Pardon me, Mr. Jayakar, in that case the Government of the day, when the objection is raised, will probably try their very best to meet the objection. This is when everything has failed. You have been in the Legislature, and we know something also of the ways of Governments. The Government do not allow an *impasse* to arise unless there is no other course left open to them. If you were the Prime Minister and that objection was raised, your Government would try to meet that objection.

Sir Tej Bahadur Sapru: At what stage, therefore, will you give this right against an offending Bill? After the Government has tried all measures?

Mr. Jinnah: At the stage when the Government decided to proceed with that Bill.

Mr. Iyengar: Suppose a two-thirds majority of a community, though it may be a minority community, is determined to obstruct all Government measures, and in every case obstructs Bills in this way, alleging that they raise communal or religious issues, what happens?

Mr. Jinnah: You are attributing to people intentions. . . . .

Mr. Iyengar: I think I am attributing political strategy.

Mr. Jinnah: If you think that people are so wicked, you had better retire from making any constitution.

Mr. Iyengar: You and I obstructed financial Bills, you know.

Mr. Jinnah: Excuse me; I did not. You did.

Mr. Iyengar: You voted against supplies.

Mr. Jinnah: I did not.

Mr. Iyengar: You did.

Chairman: Let us let bygones be by gones. We are legislating for the future.

Mr. Jinnah: I think Mr. Iyengar has got a night-mare. Because he has done nothing else but obstruct in the Legislature—and he always did that because that was his policy—therefore he cannot get over the idea that everybody else would do the same thing. Let us hope that, in your future constitution, people will be responsible people, that people will not, merely for the sake of opposition, raise difficulties. If that is the spirit in which you are going to work, then, of course, no constitution will work however perfect you make it.

Sir Tej Bahadur Sapru: Mr. Jinnah, will you just permit me to call your attention to one thing? Perhaps you might express your opinion on the procedure which was followed in India itself, when the Supreme Court existed, of registering the Statutes of the Governor-General in the Supreme Court. Would not that practice be better? In the time of the East India Company, when the Supreme Court existed, the Statutes passed by the Governor-General were registered.

Mr. Iyengar: For a few years.

Sir Tej Bahadur Sapru: They were registered in the Supreme Court, and unless they were registered they were not of any binding force.

Mr. Jinnah: I am assuming now that people will not raise any factious, frivolous objections. I am now assuming that you have got two-thirds of the members of a community or class who really feel that a particular Bill infringes their rights. When I say rights, I mean a limited kind of rights—I do not mean every right —I do not mean every Bill. If there is going to be a frivolous objection, Mr. Iyengar, supposing you bring in a Transfer of Property Act amendment, and if you think that the Hindus will rise in a body and say it is going to affect their religion, as they did in the last Legislature—

Mr. Iyengar: Many pieces of legislation were treated as communal in the last Legislative Assembly.

Mr. Jinnah: I am just giving you the answer. Supposing the Hindus in a body—two-thirds of them—say it affects their religion, I am prepared, if I have anything to do with it, to say to them: Very well, I accept your two-thirds majority; it is sufficient for me. What is going to hoppen? Under the Statute, you have got

one month within which you can file the suit and get the decision of the tribunal. Whatever that decision is, of course it will be followed. Supposing a few months are lost, it is only a question of a few months, not a question of years or centuries. I think you are young enough and you will be able to pass many measures if you are there. However, it really comes to this. Why allow the measure to proceed further and become law, and then start the ball rolling? The only difference is, are you going to start the ball rolling after or before? It cannot be urged that there will be a great deal of waste of time, because, as I say, you must fix a limit. The suit must be filed, say, within one month. After all, your Supreme Court, if you are going to follow the suggestions which I make, should be vested only with the jurisdiction arising out of or relating to the constitution. It will not be so overworked, and therefore the cases can be expeditiously disposed of. I say that seems to me the only satisfactory method. I will finish with that, I do not want to take up more time.

Mr. Joshi: You propose to give this right of appeal to two-thirds of the members?

Mr. Jinnah: It is not a right of appeal; it is a right of exclusive jurisdiction.

Mr. Joshi: To two-thirds of the members of the community? Do you wish to confine this right to religious communities, or would you extend it also to economic communities?

Mr. Jinnah: I said that if there is any measure which infringes any provision of the constitution—which includes fundamental rights and many other things—if it infringes any provision of the constitution which affects any subject or any community or any class, and if an objection is raised, by at least a majority of two-thirds, that it affects their particular right under the constitution, that measure ought to be suspended, and within one month that party or a member of that party or community should be entitled to file an action.

Mr. Joshi: Now I will give you an instance. I will tell you what point I am making. Supposing the fundamental rights define that there shall be no discrimination against classes—that no legislation which discriminates between classes shall be passed, or no legislation which discriminates against sex should be passed. Now, if a Bill introduces some clause which discriminates between sexes or between economic classes, those classes may not be represented in the Legislature. Under those circumstances, do you provide any measure?

Mr. Jinnah: I said " Yes ". In that case, when the measure is passed.

Mr. Joshi: No, in the Bill form, when the measure is in the form of a Bill.

Mr. Jinnah: If there is nobody to raise the objection, then how can you decide it?

Mr. Joshi: Yes, but what protection do you propose to give them?

Mr. Jinnah: The protection I propose to give those who are not there to raise the objection is the protection that you have as a matter of right to challenge that Statute in a Court of Law as infringing your rights.

Sir Maneckjee Dadabhoy: But, in case of discriminatory legislation, would you not allow that right to be given to other members who are not of the same class?

Mr. Joshi: Why not, therefore, give that right to anyone affected? There may be a discrimination against women and there may not be women members. Why not, therefore, give the right to anyone whose interests are affected?

Mr. Jayakar: That would mean that one person could block legislation.

Mr. Joshi: No; if the class which is affected is not represented in the Legislature, you must provide for their protection.

Mr. Jayakar: After it becomes an Act.

Mr. Joshi: Why give greater facilities to those classes which are represented in the Legislature?

Dr. Ambedkar: They will have a double remedy, because they will have the remedy of blocking the Bill as such.

Mr. Joshi: They will have the remedy of being represented in the Legislature and blocking legislation, and you give them a further right; but to those people who are not represented in the Legislature, you give practically no remedy.

Mr. Jayakar: There must be a two-thirds majority. Therefore, *ex-hypothesi* it can only apply to those interests which have got a group in the Legislature.

Mr. Joshi: My point is that, as Mr. Jinnah is proposing to give certain protection to those classes which will be represented in the Legislature, whether he proposes to give to those classes which require greater protection a similar power to block Bills when their interests are affected.

Mr. Jayakar: If you give similar protection to those classes, it must come to this, that one or two members of the Legislature may be able to block a Bill.

Mr. Joshi: I am not thinking of one or two members. There may be a class for which there may be no member, and then any one man should be able to act.

Sardar Ujjal Singh: What classes have you in mind?

Mr. Joshi: I have in mind women and workers. They may not get elected; and how can you define a worker? How will you define a member as belonging to the working class unless there is a special constituency for the workers? Any member who gets in for a general constituency cannot be defined as a worker. A member can be defined according to his religion, as a Hindu, a Mussalman

and so on, but you cannot define a member as a working-class member unles there is a special representation for the workers.

Sardar Ujjal Singh: Labour would be represented in every constituency.

Mr. Joshi: Labour would be represented through general constituencies, but such a member need not necessarily be a worker. I am therefore asking whether those people who require greater protection should not have the same power to block Bills as those classes of people who will be better represented will have. In my judgment, those classes require better protection.

Chairman: Are you suggesting that a Trade Union should have the right to block a Bill?

Mr. Joshi: Yes, Sir. My point is that those classes which require greater protection should have those rights before those classes which are represented in the Legislature.

Dr. Ambedkar: There is just one more thing I should like to ask you. After this procedure is over—I mean, a two-thirds majority raising an objection, and one or two members going to a Court of law to see whether it infringes any religious practice, and the High Court or the Federal Court gives the decision that it does not, and the Bill is proceeded with and becomes an Act—would you thereafter agree to a right for any single individual member, whose religious practice or liberty was affected, to come in and challenge our Act and say it was *ultra vires?*

Mr. Jinnah: No, it would be *res judicata.* The question is decided. It went to the Court, and the Court held that the Bill was not *ultra vires.* Therefore it is *res judicata.* You cannot go on litigating.

Mr. Jayakar: The subject matter is different. One was a Bill and the other would be an Act.

Mr. Jinnah: Mr. Jayakar, I think, if you were a Judge of the Supreme Court, you would dismiss that suit in five minutes.

Mr. Jayakar: I do not know.

Dr. Ambedkar: Members would take an objection in the form in which it is. Would the members of the community, who were not in the Legislative Council, have the right to go to law?

Mr. Jinnah: Oh, yes, if no objection is taken. If they are all sleeping and the Bill becomes law, if it is *ultra vires,* it is still *ultra vires;* and you can go to the Court and have it declared *ultra vires.*

Mr. Joshi: They get less jurisdiction.

Mr. Jinnah: I was answering Dr. Ambedkar's question. As to your question, Mr. Joshi, I think it is impossible to meet you. That is all I can say.

Then, Sir, I said that therefore I would confine the jurisdiction of the Federal Court only to those matters which related to the constitution and those matters which arise out of the constitution;

but I have a greater ambition than that, and I do not stop at that. I most respectfully make my submission to this Committee to consider the other two questions separately—that is the appellate civil jurisdiction and the criminal jurisdiction. I said that, if you separate your Federal Court, and if you will, in making the appointments, select the personnel of that Court which will be specially qualified in matters arising out of the constitution, you will then, I think, set up a Court which will be the most desirable Court. We know, Sir, that this is an age of specialists. In India we have not yet risen to that height. You will be surprised to hear —and I think my friends here will bear me out—that in India, in the morning, you are arguing a complicated question of Hindu law, and, in the afternoon, you are dealing with a case of light and air and easements, and perhaps the next day you are dealing with a case of a commercial kind, and a third day, perhaps, you are dealing with a divorce action, and a fourth day you are dealing with an admiralty action.

Chairman: Have you not specialised people for admiralty work, say, and special people for divorce?

Mr. Jinnah: No. Of course, our system is different. You have here in this country people that specialise. You have got the Chancery Division, you have got the King's Bench Division, Provate Admiralty, Divorce and so on. You have got a special Bar for special laws.

Chairman: Yes—patents, railways and so on.

Mr. Jinnah: Patents and Income-tax and criminal law—various matters in which the Counsel are specialised. Therefore, what I was suggesting was this, that we should not lose sight of the fact that there is a very strong feeling in India for a Court of appellate jurisdiction which should take the place of the Privy Council—a very strong feeling—and that Court must come, and must be constituted. But constitute that Court, again, proceeding on the lines of specialisation. There we want men well versed in civil laws—the general civil laws—and you will therefore have to constitute that Court having regard to its requirements. I would suggest that you should have a Supreme Court having appellate jurisdiction over the Provincial High Courts. In other words, in one sentence, that Court should take the place of the Privy Council—namely, the appeals should lie under the same terms and conditions as the appeals lie now to the Privy Council from the various High Courts in India. It would not make any difference in the way of number or expenses, because, if you are going to jumble up everything in one Court, the work has got to be done, and you require a number of men to do the work—so whether you separate or whether you jumble up, I do not think you will save in cost or in the number of Judges. Therefore, I say, let us develop the idea of a separate Supreme Court having the same jurisdiction as the Privy Council has now, and, in the course of time, that Supreme Court may succeed in attracting the attention of the Indian States, and, in course of time—I hope sooner than many people think—many of

the Indian States may think it desirable that the appeals from their High Courts should be allowed to be filed before that Supreme Court. At present it can only be confined to British India, unless, of course, the States are willing to come in. Personally, I should welcome them if they were willing to come in; but, as far as I can see from the speeches that were made on behalf of the Indian States, they are not prepared to surrender their Courts to any Appeal Court in matters other than those affecting the federal constitution and the federal law. I say that, therefore, if you constitute the Supreme Court, it should be vested with the jurisdiction to deal with federal laws—not the constitution but federal laws—and have the civil appellate jurisdiction over the British India High Court.

Sir Maneckjee Dadabhoy: What about Mr. Jayakar's argument yesterday, that you cannot take away the right of an individual to appeal to the Privy Council? You want a man to go to the Supreme Court. Mr. Jayakar argued yesterday that the right to appeal to the Privy Council, which every individual has, cannot be taken away by any Statute or anything. He possesses that right.

Mr. Jinnah: Mr. Jayakar was quite right.

Sir Maneckjee Dadabhoy: I therefore want to understand your argument.

Mr. Jinnah: You are anticipating me; I was coming to that. Mr. Jayakar was quite right. When you have established your Supreme Court, such as I am trying to put before you, it will have the jurisdiction that the Privy Council has now; but it has nothing to do with the Prerogative of the Crown, you see, which it enjoys through the Privy Council or the Judicial Committee, to give special leave of appeal—that is to say, if your Supreme Court has decided the matter. If you want to go further, you can only do so, provided it gives a certificate to go to the Privy Council. If it refuses to give a certificate, nevertheless you cannot take away the Prerogative of the Crown to grant special leave in any given case.

Mr. Joshi: Will not a parliamentary Statute do that?

Mr. Jinnah: Yes. You can do anything by Statute, except bring about complete equality. I am not, therefore, suggesting at present that that Prerogative of the Crown should be taken away. At present I think it is desirable.

To proceed now to the third point, with regard to criminal jurisdiction, I firmly believe that in India we must have a regular criminal Court of Appeal, just as you have in England. Until we have that, I do not think we shall be able to satisfy the wants of India. This sort of compromise suggestion—namely, that in certain matters, when there is an error of law or something like that, you may go to the Supreme Court—I am afraid is not going to help us very much, because, as far as my experience goes in criminal cases, questions of law or of error are very few indeed. Generally, in criminal cases it is a question of fact and of appreciating evidence. There are many cases where I think the necessity of a criminal Court of Appeal is beyond doubt—just as you have here

a criminal Court of Appeal which is not confined merely to questions of law or of errors or of grave irregularities. I feel that India must have a criminal Court of Appeal. It is a question which requires very close examination. I quite agree with Mr. Zafrullah Khan that there is always an appeal to the Divisional Bench, but it is not always satisfactory. I think there ought to be a criminal Court of Appeal which will give more confidence to the people than does our present position. Let me tell you, Sir, that if there is anything in India which is the greatest bulwark of the Government, it is the criminal and civil administration of justice. I think myself that this is a question which requires very close examination. Therefore, I would say: let your Federal Court, so far as we have proceeded, confine itself only to that jurisdiction which I have mentioned; have your Supreme Court, and give it appellate jurisdiction and make it take the place of the Privy Council; and have your criminal Court of Appeal.

It was said that litigation will increase, and it was asked how many Judges will be required, and so on. It was stated that lawyers demand very heavy fees, and so forth. I think the members of this Committee do not quite realise that they are not dealing with Australia or with Canada. In Australia you have a population of four millions, and in Canada you have a population of ten or eleven millions. It does not seem to be realised that, when we are talking of India, we are talking of a country as big as Europe. Supposing you were to have one Federal Court for the whole of Europe, having jurisdiction vested in it of all the federal laws, all the constitutions, civil appellate jurisdiction and criminal jurisdiction—how many Judges would you require? It is no use, therefore, saying that you will require so many Judges, because that depends upon the size of the country and upon the requirements of the country. In India you have a vast continent. That is the reason why I say that in India it is more essential, just as in the United States of America, which is the nearest example I can give—there the Federal Court is vested with jurisdiction with regard to certain specified matters, particularly the constitution; and it has no appellate jurisdiction over the Courts of the States. The country is too vast. Therefore, I say that all these arguments about the cost and the increase in the number of Judges, and about litigation going up by leaps and bounds, are not convincing. With regard to the argument that litigation will increase if there is a Court nearer at hand, I am inclined to agree with that. No doubt there is difficulty in the way of litigants to-day in coming to the Privy Council, not only on the ground of excessive cost, but on the ground of the time it takes in getting instructions and on the grounds of the delay which is involved and also the inconvenience which is involved. To give one example, very recently a matter had to be considered here. Certain papers were not available, and it could not be definitely decided what steps should be taken until those papers were available. What does one have to do in such a case? You have to write to the clients somewhere in a remote corner of India—say Madras.

A Member: Madras is not a remote corner of India.

Mr. Jinnah: I took Madras because it is a four-day journey from Bombay to some parts of Madras, and it takes fourteen days from London to Bombay. That means eighteen days altogether. Then, when the people get the letter we must allow them some time in which to reply; and by the time you get the papers, two and a half or three months have gone. It is not, therefore, merely a question of cost, but of time, delay, and inconvenience. There is not the slightest doubt about that. Above all, Sir, I cannot understand why India should not aspire to its own Supreme Court. Why should India be the only exception that is permanently tied down to the Privy Council here? Other Dominions have got it. There can, therefore, be no question as to the necessity and as to the justice of this; and accordingly I say that we should have a Supreme Court. I am only prepared to agree to this separation in view of the idea of an all-India Federation, apart from which our task would have been much easier.

I think, Sir, that I have done with the question of the Federal Court so far as your questionnaire is concerned, and I will, if I may, now categorically answer the questionnaire.

The first question is:—

> "Should members of the Federal Court be appointed by the Crown and on what tenure?"

I say "yes," by the Crown, and during their good behaviour subject to the vote of the two Houses. I do not know exactly what "a case of proved misbehaviour" means; I have not been able to understand it. I suppose the Legislature, when it passes its vote—the two Houses of the Legislature—will not give reasons why it is convinced of the misbehaviour. I suppose the votes will be that they are dissatisfied; and I say that, on the vote of the two Houses, the Judges should be liable to be removed.

The second question is:—

> "Should the Court have an original and an appellate jurisdiction, or only an appellate?"

My suggestion is that this Federal Court should have only original jurisdiction in matters relating to and arising out of the constitution, and a separate Court should be constituted, by the name of the Supreme Court, having appellate jurisdiction with regard to federal laws and appellate jurisdiction over the High Courts of the Provinces, hoping that the Indian States may, if not immediately, then in the course of time, come in, as will the Provinces. I say also that there should be a separate criminal Court of Appeal. I may qualify my statement here to this extent, that the Federal Court should be vested with jurisdiction relating to constitutional matters—matters arising out of the constitution and such other matters as may be specifically mentioned in the schedule. I mean, there are the matters such as you have referred to, Sir, in your memorandum.

The third question is:—

> " Should the Court have an exclusive original jurisdiction, *e.g.*, in the following matters? "

I have dealt with that; my proposition covers that.

The fourth qestion I think my proposition has already covered.

The fifth question is:

> " Should provision be made for special references by the Governor-General to the Court as under Section 4 of the Judicial Committee Act, 1833? "

I am not in favour of that, because I think the Courts are always reluctant to deal with abstract questions, and I do not think any useful purpose would be served. I think the Governor-General ought to rest content with such advice as he can get from his legal advisers, and act and exercise his powers, such as may be vested in him, instead of being allowed to refer abstract questions from time to time to a judicial tribunal. You will correct me, Sir, if I am wrong; but I think this power has been very seldom exercised in this country by the King.

Chairman: That is right.

Mr. Jinnah: It may have been exercised in those days for some special reason, and I am not acquainted with the history of it, as to how and why it was thought necessary; but I am not satisfied that we should follow that.

The sixth question is:—

> " Should there be a right of appeal from the Federal Court to the Privy Council as of right or by leave of the Court? "

I say " only by leave of the Court," and the right of the Crown to grant special leave of appeal should be preserved in all cases.

The last question is:—

> " What provision should be made for the enforcement of the judgments of the Courts in the States and in the Provinces respectively? "

On that question I will say this. In all disputes, so far as the Federal Government is concerned, and so far as the Units, whether they are States or whether they are Provinces, are concerned, we can only trust that, as all the Units have agreed to the setting up of the Federal Court, in the ordinary course its decisions will be respected and carried out. I think, as a matter of honour, they will be bound to respect them and to carry them out. If that is not possible in some cases however, and if, as Dr. Ambedkar pointed out, there is a conflict of a serious nature, which was so well illustrated by him, then I say that, so long as we proceed on the hypothesis that the defence of the Crown subjects lies ultimately with the Crown, the Crown must be in a position to enforce the decree or the warrant of the Federal Court.

I have now finished dealing with the questions which are more specifically before us, but many details have been raised and many extraneous matters have been introduced. The first is the suggestion that the High Courts should be centralised and that the Central Government should have control over the internal administration of the High Courts. It seems to me that, when one talks of decentralisation, when one emphasises the view that the Provinces should be autonomous, it is at once suggested or suspected that there is some communal design behind it. I am firmly convinced, with great respect to my friends who do not agree with me, that if you talk of Federation and of making your Provinces really autonomous and self-contained, and if you are going to proceed on that principle, then I say that all these arguments that if a High Court is near the Provincial Government it will be influenced and it will be affected and there will be debates in the Legislature—all this is useless. Are your Provinces to be autonomous Provinces? Are your Provinces fit for responsible government? Are your Provinces going to manage the Governments and are they capable of managing the Governments? Will you not be able to produce men who will show a better character than you are describing here when you say this will happen and that will happen? Are not you arguing against your own case when you talk like that? I say I leave the High Court to my Provincial Government. He who pays the piper must call the tune. Your Provincial Government is to foot the bill, and some member sitting in Delhi or Simla, or wherever he may be, a member of the Central Government, is to dictate to the High Court as to internal administration. Sir, I know in the past various suggestions have been put forward. I want my friends to get out of this rut of centralisation. Centralisation has been the policy—it has been the one definite line of the Government of India—for very different reasons, for very different objects. Do not fall into that error. Get out of this centralisation. I know how the Reports have been made by various committees. The Simon Commission Report was brought into requisition to aid in support of this argument. What does the Simon Commission Report say? Does it give you any responsibility at the Centre? What sort of constitution does it propose? Do get out of that rut. If you are thinking of your Federal Government under the Federal Constitution—responsibility at the Centre with autonomous Provinces—then, I say, I have not yet heard any argument except this argument of holding out that our people are so wicked that if the High Court is responsible to the Provincial Government there will be such communal rancour, there will be so much intrigue and wickedness, that it is better to take away this High Court from that atmosphere and put the High Court in an atmosphere a little more pure in the Centre. That is the only argument.

Then, Sir, there is the other question with regard to the Letters Patent appeals and additional Judges being appointed, and the provisions in the Government of India Act as to fixing the quota for the certain number of members of the Civil Service. All those matters do not strictly arise out of this question which we are at

present discussing; but I am in general agreement with Sir Tej Bahadur Sapru. I quite agree with him that this practice of appointing additional Judges is not desirable. I remember, in my High Court, recently knocking against about half a dozen Judges, who had been on the Bench, roaming about in the corridors of the High Court with briefs in their hands.

Sir Tej Bahadur Sapru: Or possibly without briefs!

Mr. Jinnah: It is demoralising to the Bench; it is demoralising to the profession. I think it is an undesirable practice. Once you appoint a Judge, let him remain there. It may be pressed on the ground of economy, but I think in the long run it does more harm. It may save a little money, but I think it can be better managed with a little manipulation. We have, in India, Judges going on leave very often, and, if it is manipulated properly, I think you can always have, instead of additional Judges, one or two permanent Judges who can always remain there, because somebody or other is always going on leave.

Then with regard to the qualifications of a High Court Judge, I am not against the Civil Service. I am not being carried away by any other consideration, except one, that I want, in my High Court, Judges of the highest capacity, honour and integrity. It is not the fault of the Civil Service; it is not the fault of the men at all. It is the fault of the system. No man on earth placed in the position in which they are in the Service, can ever qualify himself, unless he happens to be an exceptional genius; and we have undoubtedly known a few geniuses in the Civil Service on the High Court Bench. But, I say, unless a man is a genius, you do not give him a chance to qualify himself for this position and the work that is required of him. A young civilian comes—he is sent from pillar to post, from one district to another. He is in the executive, concerned with administration, and for a number of years he roams about. This is a fact—and I think any member of the Civil Service will bear me out—that when it is found that he is not much good for the administrative and executive work, he is shunted into the judiciary. It is the simplest way to do it. You do not know what to do with him, and so you put him on the Bench and make him a District Judge or an additional Sessions Judge. If he is there as an additional Sessions Judge or a District Judge—again, it is not his fault—what does he do, what class of case comes to him? Then you have got to comply with the provisions of the Statute, because you must have the requisite number of Civil Servants on the Bench. Well, then, you have got to select from these District Judges, and you make them High Court Judges. Well, when they are there the majority of them are like fish out of water, and you cannot expect anything else. Therefore, it is not that I have any bias or any prejudice or any particular ill-will against the Civil Service; but I say no—recruit the High Court Judges from the profession, because there you have a large body of men who go through the acid test of years of practice, and have risen, by dint of their industry and merits, in their profession, and

are fully qualified; and therefore you get a far better material for your High Court Judges.

Well, Sir, there are other matters which are purely matters of detail, and I do not wish to take up the time of the Committee. I have no doubt that those details will be considered later on by those who are better qualified to deal with them.

Sir Purshotamdas Thakurdas: Lord Chancellor, I can assure the Committee that I shall be very brief indeed. I should hardly have intervened in this debate, but the thought-provoking memorandum of His Highness of Bhopal, dated 13th January of this year, tempts me to deal with one point which is pertinent to this subject. The memorandum is published in the Federal Structure Committee's Report (Part I), at pages 290 and 291. In the fifth paragraph of that memorandum His Highness says that, barring Burma, it will be found that Indian States comprise 47 per cent. of the total area of India. He admits that, in population, the States are much lower in strength than British India, and he goes on to deal with the reasons for this disparity; and, after mentioning his reasons, His Highness says—and I will quote one sentence from his memorandum—

> "I would not for one moment deny that there have been other reasons also and that Governments in the Indian States also have not in many cases paid due attention to the development of their territories."

May I specify one such reason which is relevant to this question which is before the Committee at this moment? There is no recourse to any tribunal beyond the State's own Court; and I know that this is one of the several reasons why people from British India, and, if I may say so, even people from the Indian States, fight shy of commercial or industrial enterprises on a scale bigger than the most modest. I know of many instances of this handicap. Those who have had anything to do with such enterprises in the Indian States would confirm me. It is for this reason that the Political Department is sought to be brought in for large-scale ventures in Indian States. The reasons for this may be many. In many cases the Judges are not of a high order of legal knowledge and experience. In some the Ruling Chiefs do not leave the Judges a very free hand. In most cases the prospects of the Presiding Judge depend on the sweet will of the Ruling Chief. I would therefore ask Their Highnesses of the Indian States to consider if they will not help themselves by removing this one handicap, which may be one of many others, on development of Indian State areas, by agreeing to the right of appeal in non-federal matters from Indian State Courts to the Supreme Court. Mr. Jayakar suggested yesterday a convention to this effect. I am not in a position to say how this can be done. My sole purpose in saying these few words is to impress on Their Highnesses this remedy for the backwardness of Indian States in matters commercial and industrial, which are connected with the questions before the Committee at the moment. Perhaps there may be a device to remedy this without affecting the

sovereignty of the States, about which Their Highnesses are very particular. In any case I wish these points to be on record for the consideration of this Committee and of Their Highnesses.

(*The Committee adjourned at 1 p.m. and resumed at 2-30 p.m.*)

Sir Muhammad Shafi: Towards the commencement of my speech, in opening this debate, I ventured to observe:—

> "Such has been the rapid change in the political conditions and constitutional ideals in India during the post-war period that now, at this moment, there is practical unanimity among all schools of political thought in India in favour of the early establishment of a Supreme Court."

I venture to think that the debate, extending over several days, has conclusively established the correctness of that observation. All political parties in British India and the Indian States have expressed unanimously a demand for the creation of such a Court in India, and the debate has completely established the correctness of the observation in my opening speech which I have just quoted. Apart from differences of opinion with regard to detail, then, the whole of India, British as well as Indian India, is unanimous in its demand for the creation of a Supreme Court in India. And, if I may venture to say so, representatives of Indian States have made a magnificient and generous response to the demand of British India in this respect, and have given a signal proof of their broad-minded patriotism which has won our deep admiration. The position, then, is this. There is a universal agreement among all schools of political thought in India, both British India and Indian India, in favour of a Supreme Court in our country. And, if I may venture to say so, Lord Chancellor, your own memorandum recognises the validity as well as the reasonableness of this demand.

The main question for the consideration of this Committee is, of course, the jurisdiction to be exercised by this Supreme Court when it is created. In the first place, we have to consider the question of the original jurisdiction to be exercised by this Court. The ordinary original jurisdiction which this Court is to exercise was summarised in paragraph 8 of your memorandum, Lord Chancellor; and the debate, covering several days, has shown a complete unanimity with regard to the correctness of the position embodied in that paragraph. There is general agreement that the jurisdiction of the Court should extend to all the matters specified in the paragraph to which I have referred.

Then, there is the second branch of the jurisdiction of this Court, upon which I had something to say in my opening speech—that is to say, advisory jurisdiction. All speakers have agreed that the Supreme Court should have advisory jurisdiction on a reference made to it by the Governor-General.

Sir Tej Bahadur Sapru: Not Mr. Jinnah.

Sir Muhammad Shafi: Oh yes, I do not remember any dissent.

Sir Tej Bahadur Sapru: Mr. Jinnah did not.

Sir Sultan Ahmed: I objected.

Sir Tej Bahadur Sapru: You objected, and Mr. Jinnah also objected to-day.

Mr. Zafrullah Khan: No other person?

Sir Tej Bahadur Sapru: No other person; quite right.

Sir Muhammad Shafi: Well, there is almost unanimity.

Sir Tej Bahadur Sapru: There you are right.

Sir Sultan Ahmed: Did the States agree?

Sir Tej Bahadur Sapru: I doubt it.

Sir Muhammad Shafi: But, in addition to a reference to it by the Governor-General, I have made another suggestion, that on an objection raised in the Legislative Council by a group of representatives that a particular measure or a particular portion of a measure infringed fundamental rights, and when a majority of the representatives of that group demanded it, a reference should be made to the Court for their opinion. I pointed out, during the speech of my friend across the table, that whether that reference is made by the Governor-General or by the President is immaterial, and that the real point is the making of such a reference in those circumstances. On that point there has been difference of opinion among the members of this Committee. Sir Tej Bahadur Sapru and some of my friends across the table have expresed the opinion that, instead of any reference to the Court at that stage, parties should be left to their remedy at law. I venture to submit that my learned friends, with all respect to them, have failed to appreciate the real object of my suggestion. The real object of my suggestion was to avoid the bringing into existence of a state of things in India calculated to widen the gulf between the communities. I wanted to nip any possibility of communal differences and communal tumult in the bud, by a reference of the question at once to the Court. What will be the result if the remedy which I have suggested is not adopted? The result will be that there will be tremendous agitation all over the country during the period when the measure is passing through the two Houses of the Central Legislature; and after such a measure has been actually enacted, the lesson of civil disobedience, which has been taught to the people of India during the last few years, will not be forgotten. There will be conflict between authority and the section affected by such legislation. In the third place, there will be protracted litigation in Court, with all its attendant agitation subsequently when a suit has been instituted questioning the validity of the enactment. Do my friends across the table, who expressed their opposition to my suggestion, contemplate such a state of things continuing over a long period—continuing over the period occupied by the debates in the two Houses of the Central Legislature, and that subsequently occupied by the litigation which will be started in Court, with all its attendant agitation and troubles in the country—do they con-

template all that with equanimity? I venture to submit that the best thing in the interests of the country—in the interests of peace and goodwill between the different communities—would be to hedge it in with all the restrictions you like, but to leave the group who feel that they are affected by any enactment in any Bill—who feel that their fundamental rights have been infringed—free to facilitate a reference to the Court at that stage in order to obtain the opinion of the Court.

Sir Tej Bahadur Sapru: Will you tell me how long you anticipate litigation starting during the progress of the Bill to last in the Supreme Court or in the Federal Court, raising the question of the validity of that legislation? How long do you think such litigation will last after the Bill has been passed?

Sir Muhammad Shafi: The reference to the Federal Court and its opinion will, comparatively speaking, take only an insignificant time, while the passage of such a measure through the two Houses in the first instance, and subsequently the institution of a suit in an original Court, and then an appeal against that right up to the highest Court of Appeal, will extend over a long period—much longer indeed than a reference to the Federal Court in the first instance. I can assure my colleagues that the suggestion I made was conceived in the best interests of intercommunal co-operation and goodwill, and in the best interests of India, and was calculated to nip in the bud an evil which, if allowed to remain during all that period when litigation in the Courts was going on, would bring about disaster so far as intercommunal co-operation is concerned.

Mr. Jayakar suggested that the Court should have original jurisdiction in cases against foreign nationals. I venture to submit that that would be unnecessarily burdening the Court with business which could very easily be done by ordinary Courts in India. Of course, these foreign nationals would have a right of appeal to the Federal Court if the questions involved in the case were such as were cognizable by the Federal Court. Otherwise, there is no reason why the cases of these foreign nationals should not be tried by the ordinary Courts in the country, up to the High Courts in the various Provinces.

Coming now to the appellate jurisdiction of the proposed Court, in federal matters, there is unanimity of opinion amongst all who have taken part in the debate that the Court should have appellate jurisdiction in the matters specified in the Lord Chancellor's Memorandum. I need not, therefore, dwell upon that portion of the subject any longer. There is, further, complete unanimity, as far as I can judge, with regard to the civil appellate jurisdiction. There is, however, a difference of opinion on my suggestion regarding the criminal appellate jurisdiction which, I submitted, the Court should possess.

I notice that, as regards cases of appeals by Government against acquittals—in which cases I suggested that, should the High Court

convert an acquittal into a conviction, there ought to be an appeal to the Supreme Court—with the single exception of my friend on my right (Sir Sultan Ahmed), who happens to be the Government Advocate of Bihar, no one opposed that suggestion of mine. I venture to submit that, if my friend could for a moment divest himself of the position which he occupies in the Province of Bihar, his judgment would be somewhat different. At any rate, I, for one, feel confident that would be the case. It seems to me that, when a man has been tried by a Sessions Judge with the aid of assessors, and that trial has resulted in his acquittal by a Court which has had the witnesses before it, then I venture to submit that even if that extraordinary provision in our Criminal Procedure Code, authorising appeal against an acquittal, is to remain—and I, for one, think that it ought to be expunged—then it is in the highest degree unjust to the accused person that, should the High Court reverse the acquittal and convert it into a conviction, there should be no further appeal against the judgment of the High Court. The High Court has not, as is obvious, had the witnesses before it. It knows nothing about the demeanour of the witnesses; it knows nothing about the effect which that demeanour has produced upon the Judge who actually tried the case; and, merely on the printed record, the High Court, after hearing Counsel, comes to an opinion on the facts of the case.

Sir Sultan Ahmed: Will the second appellate Court have any further advantage on these points?

Sir Muhammad Shafi: That is beside the point—I submit that does not at all touch the essence of the argument which I am placing before you. At any rate, it will be in the same position as, if not in a better position than, the High Court, for it will have two conflicting opinions before it—one by the original Court trying the case and the other by the High Court; and no doubt it will bear in mind the fact that the Judge who presided over the original Court was in a far better position to come to a correct judgment than the High Court. I submit that it is in the highest degree unjust to an accused person that, once he has been tried by an original Court, and the presiding Judge has had an opportunity of seeing the witnesses and watching their demeanour, and has had much better opportunities of coming to a correct judgment than an Appeal Court, which may possibly be influenced by the advocacy of a very able Government Advocate like my friend on my right (Sir Sultan Ahmed)—I say it is in the highest degree inequitable that, when two Courts have differed in opinion in those circumstances, the accused person should not have the right to go to a higher Court in order to question the correctness of the High Court. I submit, therefore, that the highest Court of Appeal, which we are seeking to establish in India, ought to have jurisdiction to hear appeals in such cases.

As regards ordinary murder cases in which a conviction has resulted in the Sessions Court, against which conviction an accused person has had an opportunity of appealing to the High Court, and

the High Court has rejected his appeal, the case is, I admit, somewhat different. But the position which I adopted in my opening speech was that, while there is what is called a revision to the High Court in all other criminal cases in India—that is to say, after a man has been tried and convicted he has first the right of appeal to the Sessions Court, and, if his appeal is rejected by the Sessions Judge, he has the right to come up to the High Court on revision, and the revisional powers of the High Court are very extensive, —there is, on the other hand, in the case of murder trials, no authority higher than the High Court itself, which can correct any errors which may have been committed by the High Court in hearing the appeal against a conviction. I suggest, for the consideration of the Lord Chancellor, that similar power—call it power of appeal or power of revision—should be vested in the highest Court of Appeal that we are now creating in India in murder cases.

In so far as appeals to the Privy Council are concerned, the position will remain practically as it is now. In certain cases, where the Supreme Court in India has reversed or modified the decree of the High Court, there will be, I venture to submit, an appeal of right to the Privy Council; but where there are concurrent judgments delivered by the two Courts, then the existing provisions of the Code of Civil Procedure, where substantial questions of law are concerned, will remain, while of course the Privy Council will have its prerogative of giving permission to appeal in any case in whch it thinks fit. I submit, therefore, that the submissions which I have made, Lord Chancellor, in connection with the appeal in criminal cases, are sound and ought to be embodied in the proposed amendment.

Coming now to another question raised during the course of the debate—who shall appoint the Judges to this Court?—I submit that the power of appointment should vest in the Crown or in the Governor-General representing the Crown, and the reason for that, I venture to submit, is self-evident. It is essential for the independence of the Court that the power of appointment should vest in the Crown, for there will be disputes between the Federal Government and one or other of the Units of this Federation, and between Unit and Unit, and in consequence, unless the appointment is made by the Crown or by the Governor-General as representing the Crown, the independence of the Court will be impaired. I venture to submit, therefore, that the power of appointment to this Court should vest in the Crown or in the Governor-General as representing the Crown.

So far as the question, from which class should the Judges of this Court be drawn, is concerned—whether they should be only practising lawyers or Judges of High Courts, and if Judges of High Courts, whether they should be lawyer Judges or even civilian Judges—I venture to submit that the real test is that the best legal talent and experience should be available for appointment to this Court. Bearing that fact in mind, I venture to submit that practising lawyers of fifteen years' standing should be the minimum

qualification so far as the Bar is concerned—and it will be noticed that fifteen years is a compromise between ten and twenty, two periods which were suggested; and also, of course, Judges of High Courts may be promoted to our highest Court of Appeal. Now, Judges of High Courts will be either lawyers or Judges selected from the Civil Service who have spent the greater portion of their period of service on the judicial side, and I have no doubt that it will be only those Judges belonging to the Services who have distinguished themselves on the Bench, and have given proof of their legal ability as well as their judicial-mindedness, who will have the chance of being promoted to the highest Court in India.

Sir Maneckjee Dadabhoy: I am afraid there was some difference of opinion there as regards the promotion of these High Court Judges to the Supreme Court. I believe it was argued that such a possibility should not be introduced.

Sir Muhammad Shafi: I have no recollection of anybody arguing that Judges of the High Court should not be promoted.

Sir Maneckjee Dadabhoy: Sitting Judges of the High Court—that was my impression.

Sir Muhammad Shafi: No; I do not remember anyone putting forward that point of view.

Mr. Zafrullah Khan: They are eminently qualified.

Sir Muhammad Shafi: Then, as regards the age limit, I venture to submit that the age limit should be seventy. My learned friend, Sir Maneckjee Dadabhoy, in that connection made a remark which evoked some laughter; but, if I may venture to say so, my friend's own instance is in point.

It will be remembered that, in my opening remarks, I did not make any suggestion with regard to the pay of the Judges of this Court, but as opinions have been expressed during the course of the debate, I venture to think that the pay of these ordinary Judges should be the same as that of the Chief Justices of High Courts other than that of Calcutta, and that it should constitute a non-voted item.

With regard to the question of removal of the Judges, I think that the analogy of Section 72 of the Australian Act ought to be adopted and that they should be removable only on an Address by the two Houses of the Central Legislature.

These are my main submissions with regard to the subject matter which is directly before us; but my friend, Sir Tej Bahadur Sapru, raised a question with regard to the High Court Judges. With regard to that question, may I invite the attention of this Committee to what the Government of India have said in their Despatch in paragraph 53 at page 49:—

> "Amongst subjects not intimately connected with constitutional issues of fundamental importance are the recommendations made by the Commission that the charges of all High Courts, including the Chief Court of Oudh and the

Courts of the Judicial Commissioners of the Central Provinces and Sind, should be put upon central revenues, and that the administrative control of all such Courts should be exercised by the Government of India and not by Provincial Governments. We have made a summary examination of these proposals and have received in very general terms the views of the Courts and the Local Governments concerned. The material before us, however, is not sufficient for the adequate consideration of these recommendations, the financial and administrative aspects of which, intricate in themselves, will require detailed exploration, in consultation with Local Governments, in the light of the decisions reached on the larger constitutional issues; and we are of opinion that they could be more conveniently approached when those decisions have been arrived at."

I venture to submit that we would be prejudging the ultimate decision, after proper enquiry and proper consideration of all the pros and cons of the question, if we were to express any opinion in this Committee here. Therefore, I do not want to say anything further on that question.

My Lord Chancellor, that is all I have to say in connection with the debates which we have had on this very important question. It must now be clear to His Majesty's Government, as a result of these debates, that all schools of thought in India are unanimous in pressing for the creation of this highest Court of Appeal in India; and, personally, I do not see any reason why the creation of such a Court should not be taken in hand as soon as possible.

HEADS 5 AND 6.

5.—THE MINISTRY, AND ITS RELATIONS WITH THE LEGISLATURE.

6.—DISTRIBUTION OF LEGISLATIVE POWERS BETWEEN THE FEDERAL AND PROVINCIAL LEGISLATURES, AND EFFECT IN THE STATES OF LEGISLATION RELATING TO FEDERAL SUBJECTS.

The following points for discussion in connection with Head 5 were drafted by the Chairman:—

(i) *Proceeding on the basis (see paragraph 9) of this Committee's Second Report, that Executive power and authority will vest in the Crown, represented by the Governor-General, how are the Governor-General's Ministers to be appointed? Is there necessarily to be a Prime Minister; and, if so, is the selection and appointment of the other Ministers to be made invariably, and as a constitutional necessity, through him?*

(ii) *What is to be the number of the Federal Ministers; or, if no number is to be prescribed by the constitution, by what authority is the number in practice to be determined and modified?*

(iii) *Is provision to be made for the representation in the Council of Ministers of—*

(a) *the States and British India respectively, and or*

(b) *of different classes, communities or interests; if so, of what classes, communities or interests?*

(iv) *If there are to be such representative Ministers, are their respective numbers to be prescribed either in the constitution itself, or by Instructions to the Governor-General?*

(v) (a) *In what sense are Ministers to be responsible to the Legislature?*

(b) *Is this responsibility to be collective? and, if so—*

(c) *Is such collective responsibility to be recognised and expressed in the constitution?*

(vi) *What is to be the relationship of the persons appointed by the Governor-General to assist him in the administration of the "Reserved" portfolios to—*

(a) *the Legislature? (Are they, for example, to be, or become, members of one or other Chamber, with the usual rights as such to speak and vote, or are they merely to have the right to speak in either Chamber, with no power to vote?);*

(b) *the Council of Ministers? (Are they, for example, to attend all meetings of Ministers, or only when directed to do so by the Governor-General?).*

(vii) *Could the constitution itself, as distinct from constitutional usage and practice, appropriately purport to prescribe and define—*

(a) *the circumstances in which a Ministry is to be held to retain or to have lost the confidence of the Legislature, and in which it is justified or not justified in retaining office?*

(b) *the circumstances in which "in the interests of stability an adverse vote should not.....necessarily involve the resignation of a Ministry" (Second Report of Federal Structure sub-Committee, Section 35)—having regard to the fact that, in general, in parliamentary systems of government an adverse vote does not necessarily involve a Ministry's resignation?*

(c) *whether or not a Ministry would be justified in retaining office if, on any given matter, they are accorded the support of one Chamber but denied that of the other?*

(viii) *Would stability be secured in practice by an express provision in the constitution that a vote of no-confidence in the Ministry is not effective unless it is carried by a vote of not less than two-thirds (or some other arbitrarily fixed proportion) of the members present and voting (or of the total membership of one or both Chambers)?*

(ix) *Is it possible to secure, without impairing the unity of the Legislature, the expressed desire of the States that their representatives should take no part in the discussion of British Indian affairs?*

If so, would this be satisfactorily effected by providing in the constitution that all purely British Indian matters should stand referred to a Committee consisting of all the British Indian representatives or to a Standing Committee of them?

Would it be possible to exclude the representatives of the States from voting on any such British Indian matter which the Ministry, having experienced or anticipating an adverse decision from the British Indian representatives, decided to bring before the Legislature as a whole as a matter of confidence?

The following points for discussion in connection with Head 6 were drafted by the Chairman:—

(i) *Is the constitution to declare in terms that the legislative powers of the Federal Legislature and of the Provincial Legislatures are confined respectively to the spheres of Federal (and Central) subjects and Provincial subjects?*

(NOTE.—*Under the present Government of India Act, it will be remembered, the combined effect of Sections 65 and 80A may be broadly stated as being that there is no statutory distinction between the extent of the legislative powers of the Central Legislature and the Legislature of a Province, except that the competence of the latter does not extend beyond the provincial boundaries. While, therefore, there are provisions* designed to ensure that, without the previous assent of the Governor-General, neither body shall invade the sphere assigned to the other by the allocation of subjects under the Devolution Rules, the position remains as it was before the Act of 1919, that no Act passed by either is challengeable on the ground that it could be validly enacted only by the other. An affirmative answer to this question would, therefore, alter this position*).

(ii) *Where are the residual legislative powers to lie?*

(iii) *Is it to be taken as accepted doctrine that "it is of the essence of a Federal constitution that the enactments of the Federal Legislature, acting within its legal scope, should have full force and effect throughout all Units comprised in the Federation" (First Report of Federal Structure sub-Committee, paragraph 8), and that consequently Acts of the Federal Legislature relating to Federal subjects will apply* proprio vigore *to the territory of the States members of the Federation in the same way and to the same extent as they will apply to the Provinces?*

* Section 67 (2), Clauses (I), (II) and (III).

(iv) *Even if the answer to Question* (i) *is in general in the affirmative, are the Federal and Provincial Legislatures to retain in any respect concurrent powers of legislation? If so, in what respects or in relation to what subjects (or aspects of subjects)?*

(v) *If on any matter there are to be concurrent powers, are federal laws to prevail over provincial laws on the same subject?*

(vi) *Is the question of* ultra vires *legislation to be left exclusively to the Courts, or is any machinery practicable which would prevent the question of* ultra vires *arising or of restricting inconvenience when it does arise (cf. Government of India Act, s. 84 (2) last eight lines)?*

Chairman: There are certain things that I am very anxious to obtain your opinion about, which are absolutely necessary for our draughtsmen to whom we shall have to entrust the task of drafting the Bill to be placed eventually before Parliament. I want now, if I may, to read out the questions upon which I want your opinion. I am very anxious that none of these questions should infringe upon the communal question. Up till now, I have had nothing to do with the communal question, and I express no opinion upon it; but the questions that I do want you to discuss, and which are absolutely necessary in order to frame some of the earlier clauses of the constitution, are those I am going to read out now. I am particularly anxious that we should steer clear of the communal question altogether, and I ask you to be good enough to do that. I suppose it will almost be possible to introduce the communal question into any topic of discussion, but I beg you, in discussing these matters, to keep quite clear of it. I have excised some of them so as to do away with that question.

Now the first question, if you will look at Head 6 of the paper I circulated, is this:—

"(i) Is the constitution to declare in terms that the legislative powers of the Federal Legislature and of the Provincial Legislatures are confined respectively to the spheres of Federal (and Central) subjects and Provincial subjects?"

Then there is a note about it, which reads:—

"NOTE.—Under the present Government of India Act, it will be remembered, the combined effect of Sections 65 and 80A may be broadly stated as being that there is no statutory distinction between the extent of the legislative powers of the Central Legislature and the Legislature of a Province, except that the competence of the latter does not extend beyond the provincial boundaries. While, therefore, there are provisions* designed to ensure that, without the previous assent of the Governor-General, neither body shall invade the sphere assigned to the other by the allocation of subjects under the

* Section 67 (2), Clauses (I), (II) and (III).

Devolution Rules, the position remains as it was before the Act of 1919, that no Act passed by either is challengeable on the ground that it could be validly enacted only by the other. An affirmative answer to this question would, therefore, alter this position."

With regard to question (ii), I ask you to leave that out. Question (ii) is:—

"(ii) Where are the residual legislative powers to lie?"

The third question is this:—

"(iii) Is it to be taken as accepted doctrine that 'it is of the essence of a Federal constitution that the enactments of the Federal Legislature, acting within its legal scope, should have full force and effect throughout all Units comprised in the Federation' (First Report of Federal Structure sub-Committee, paragraph 8), and that consequently Acts of the Federal Legislature relating to Federal subjects will apply *proprio vigore* to the territory of the States members of the Federation in the same way and to the same extent as they will apply to the Provinces?"

On that I hope to get the assistance of the States Delegation.

"(iv) Even if the answer to Question (i) is in general in the affirmative, are the Federal and Provincial Legislatures to retain in any respect concurrent powers of legislation? If so, in what respects or in relation to what subjects (or aspects of subjects)?

(v) If on any matter there are to be concurrent powers, are federal laws to prevail over provincial laws on the same subject?

(vi) Is the question of *ultra vires* legislation to be left exclusively to the Courts, or is any machinery practicable which would prevent the question of *ultra vires* arising or of restricting inconvenience when it does arise?"

With regard to Head 5, I have excised a good deal of that so as to have no part of the communal question raised upon it. Therefore, the first question I would like to ask would be:—

"(ii) What is to be the number of the Federal Ministers; or, if no number is to be prescribed by the constitution, by what authority is the number in practice to be determined and modified?

(iii) Is provision to be made for the representation in the Council of Ministers of (*a*) the States....."

I am in a little difficulty about this subject and I very much want your help. I think it can be discussed without trenching upon the communal question. If it cannot be, I propose to stop it going any further. It really is a very difficult question to decide.

"(v) (*a*) In what sense are Ministers to be responsible to the Legislature?

(*b*) Is this responsibility to be collective? and, if so—

(*c*) Is such collective responsibility to be recognised and expressed in the constitution?"

May I just remind you, as regards that—I have been looking into it—that, as to the doctrine of collective responsibility, it may not be possible to apply it to India. I express no opinion, because I want to hear arguments upon it. It is a very curious fact that one of my predecessors in the Chair of Lord Chancellor, Lord Thurlow, was Lord Chancellor in several successive Governments. It was about 1780—that sort of time. Apparently then collective responsibility had not reached its present height, and Lord Thurlow very often used not only to speak but vote against the Government of which he was a member—so that it is a modern doctrine. But I should very much like your opinion on that as a constitutional point. I must say it is difficult.

Mr. Iyengar: On one occasion he was asked by Pitt to go out.

Chairman: Yes, he was; that is quite true. Then, with regard to this, I want great help:—

"(vi) What is to be the relationship of the persons appointed by the Governor-General to assist him in the administration of the 'Reserved' portfolios to—

"(*a*) the Legislature? (Are they, for example, to be, or become, members of one or other Chamber, with the usual rights as such to speak and vote, or are they merely to have the right to speak in either Chamber, with no power to vote?);

(*b*) the Council of Ministers? (Are they, for example, to attend all meetings of Ministers, or only when directed to do so by the Governor-General?)"

The other questions are questions relating to votes of non-confidence. I need not go into them at present. But I appeal to everybody—do please avoid any discussion of any communal matter. It need not enter into any of these questions. We must get your opinion. I do not want to discuss them in any particular order. It may be one particular member of the Committee feels competent to deal with one question and one with another, so that you need not necessarily all speak on every question.

Sir Tej Bahadur Sapru: May I ask one question so as to enable many of us to settle our programmes? When do the Government hope to call a Plenary Session of the Round Table Conference, and what is the programme—because there are shipping difficulties being felt by some of us? We have made arrangements and some of us are in the course of making arrangements. We should like to know from the Government definitely what is the programme they have in view.

Chairman: My answer to that question is this. You may have noticed—I do not know whether you have done, but I think you

may have noticed from the newspapers—that we have had a General Election on in this country, and, as a matter of fact, the Prime Minister is still at Seaham. He will be back on Thursday morning. I hope to see him quite early on Thursday morning, and I will let you know as soon as possible what the answer to your question is. Once again, I am very sorry that we have had this General Election now. I will not say more about it, but it has made it extremely difficult for all of us who have been here. But the Prime Minister will be back then, and, Sir Tej, I will convey to you as soon as possible what the position is.

Sir Muhammad Shafi: May I be permitted to say this on behalf of certain members of this Committee, that while we have no objection to all but sub-head (ii) under Head 6—"Distribution of Powers between the Federal and Provincial Legislatures, and Effect in the States of Legislation relating to Federal Subjects"—being discussed, because we are as anxious as any other members of this Committee to get on, we think that the sub-heads for discussion under Head 5—"The Ministry, and its Relations with the Legislature"—ought to be postponed until after the Minorities Committee has met; and therefore we would ask Your Lordship to postpone the discussion of these Heads until after that.

Chairman: Yes, I will try to postpone as many as I possibly can. I suppose you would not mind sub-head (vi) of Head 5—"What is to be the relationship of the persons appointed by the Governor-General to assist him in the administration of the 'Reserved' portfolios?" That really cannot touch any communal question.

Pandit M. M. Malaviya: Can we discuss that question without knowing what subjects are to be reserved?

Chairman: Oh, yes, certainly you can. But, if you do not want to discuss anything, by all means do not do so.

Diwan Bahadur Mudaliyar: Lord Chancellor, I must confess to considerable difficulty in speaking on the Head which has been thrown open for discussion. I recollect the circumstances under which this has occurred; but, at the same time, it places me in an extremely embarrassing position, because it certainly disarranges all my thoughts, and I do not know if I shall not be trenching upon forbidden ground.

Chairman: If you trench upon forbidden ground nobody will follow you. You will be a trespasser, but *pecca fortiter*!

Diwan Bahadur Mudaliyar: In any case, I expect I shall be pulled up if I do.

Now, I have understood "Reserved" subjects to be those subjects which were considered to be reserved subjects at the last Session of this Conference—Defence and External Affairs—and on the basis of that supposition I shall proceed to state my views.

With reference to the reserved subject of Defence, Lord Chancellor, at the last Round Table Conference it was not finally decided

how the Army Member should be appointed. We were more or less clear that he should be appointed by the Viceroy and not chosen by the Prime Minister, but there was considerable discussion as to whether he should be appointed from the elected members of the Legislature or whether it should be an official that may be appointed as the Army Member. Since then, the position has to a certain extent been clarified; and I venture to put forward what I think would be the view of the majority of the members sitting at this table, that it would be preferable if the appointment of the Army Member were to be by the Viceroy, but from among the members of the Legislature. Various considerations have entered into a decision on this question. At the present moment, the Indian Army is one of those subjects which is treated in a very hostile spirit by the Legislative Assembly. I speak with knowledge of the members of the Legislative Assembly, and I think it is certainly unfair to our Army that our Legislature should not have that confidence in its administration which it deserves. In other countries the Army is the pride of the Nation, and Legislatures hardly ever try to criticise the administration of the Army, as has unfortunately been the case in India. But the fault has not altogether been of the Legislature. It seems to me that, if you want a right perspective to be taken of the Army by the Legislature, nothing will help it more than the fact that the Member was chosen from among themselves. Though he would not be primarily responsible to the Legislature on all matters concerning the Army, it would be a great advance, and would place the Army with reference to the Legislature in a better position than it occupies to-day. The Army Member, Lord Chancellor, I visualise as the spokesman of the interests of the Army and as the spokesman on Army questions. He ought to come before the Legislature feeling that, on the policy which he expounds and on matters relating to the Army which he sets before the Legislature, he will be certain of some measure of support from the members of the Legislature. It will be not to the advantage of the Army itself if, from the moment the Member in charge of it steps into the Legislature, he is looked upon with suspicion and distrust and all that he says is discountenanced beforehand. I venture to think that an official Member in charge of the Army will be in that unhappy position; and I think that there is a great deal to be said in favour of choosing, from among the Legislative Council members, a Member in charge of Defence.

Having said that with reference to the choice of the Member in charge of Defence, let me at once try to place my views with reference to his position *vis-a-vis* the Cabinet in the first instance, and the Legislature in the second instance. I think that the Army Member ought to be not merely the spokesman of the Army, but that he should have definite administrative duties with reference to the Army. He should hold the portfolio of Defence. He should be able to follow the daily administration of the Army in the sense in which the Secretary of State for War in this country follows the administration. Technical details—details regarding the Army

proper and its disposition—will of course be in the hands of the Commander-in-Chief; but that portion of the Army administration which has any relationship to the Government and to the Legislature must be under his administrative control. He will hold the portfolio of Defence, and will not be merely an advocate primed from time to time to put forward before the Legislature those ideas which he has taken for just that occasion and for just the time being. With that advantage and with that position, he will partake in all the discussions in the Cabinet. He will partake not merely in discussions with regard to the Army, but with reference to all subjects which may arise for the consideration of the Cabinet. Similarly, the other Members of the Cabinet will have before them all the proposals which the Army Member may have to lay before them. This mutual understanding between the two sections—the Reserved Member in charge of Defence and the other Members— will be of great help in lubricating the wheels of the administrative machinery. At the present moment, administration is so complex that you cannot possibly conceive that Defence can be relegated and kept apart from other spheres of civil administration. The question of Defence naturally involves also questions relating to the civil departments, and questions relating to civil departments may at any time involve questions relating to Defence. It seems to me, therefore, that it is absolutely essential that there should be joint discussions both on Reserved Subjects and on non-Reserved Subjects in the Cabinet of the Governor-General. I would therefore place the Army Member in exactly the same position as other Members of the Cabinet so far as discussions in the Cabinet are concerned. Ultimately, of course, on military matters, the decision of the Army Member, if it is supported by the Governor-General, will prevail as against the views of the other Members of the Cabinet, even as ultimately, with reference to those other civil departments, the opinion of the Cabinet, whether the Army Member agrees with it or not, will prevail. He will have, so far as Defence matters are concerned, the advice, the opinion and the valuable comment of the other members of the Cabinet; but the decision will be finally his and that of the Governor-General.

Chairman: Is the Army Minister—as we will call him for the moment, for the want of a better name—entitled to attend as of right?

Diwan Bahadur Mudaliyar: Yes, My Lord; that was the point I was making.

Chairman: I know that, but on every question or merely on questions where the Army is involved?

Diwan Bahadur Mudaliyar: On every question. I would not make any distinction between the Army Member and the other Members of the Cabinet as far as Cabinet meetings are concerned. He will be present on every occasion and take part in the discussion of every question, because I think that at any stage of the discussion of a civil department question considerations may be involved relating to the Army. You cannot compartmentalise these

two things, and you cannot suggest that a discussion with reference to civil departments can go on without there being any possibility of a reference to Defence considerations or considerations relating to the Army.

Broadlly speaking, therefore, I feel that, in the Cabinet discussions, the Army Member should not be in a different position from that of the other Members of the Cabinet, so far as other questions before the Cabinet are concerned; but I say that, ultimately, the decisions on Defence matters will be his and those of the Governor-General, just as decisions with regard to other matters will be those of the rest of the Cabinet and the Prime Minister.

Chairman: If I may interrupt again, would the Army Member be a military man?

Diwan Bahadur Mudaliyar: No, My Lord. I think, from what I have already stated, it is obvious that he could not be a military man, at least at the present time. I have suggested that he should be chosen from the members of the Legislature, and at the present time I see no chance of a military man being a member of the Legislature elected by constituents.

So far as his administration of his own department is concerned, he will naturally have the assistance of the military experts. Possibly he will be advised by a Military Council. Even His Excellency the Commander-in-Chief receives advice at the present time. There is a Military Council—it is not a Statutory Council—consisting of the Chief of the General Staff, the Adjutant-General, the Quartermaster-General, the Master-General of Ordnance, the Army Secretary (who is a member of the Legislative Assembly) and the Financial Adviser on military affairs. His Excellency the Commander-in-Chief acts on that advice, and it is possible that the Army Member will have a similar Council which will advise him on all military affairs, so far as his administration of the subject is concerned. With that knowledge and with that advice he will come before the Cabinet and expound the Defence policy to the other Members of the Cabinet. Where the other Members of the Cabinet agree with him, there will be no more said about it; but, should they disagree, he will take the matter before His Excellency the Governor-General, and the decision of the Governor-General will prevail.

Chairman: Do you envisage that the Army Member must have been somebody who was elected to the Legislature, or could he be somebody outside the Legislature, or could he be somebody outside the Legislature but with an obligation, if he were made Army Member, to get a seat within a certain time?

Diwan Bahadur Mudaliyar: As I envisage it, the Army Member would be of right a member of the Legislature.

Chairman: One of the people elected?

Diwan Bahadur Mudaliyar: One of the people elected. He may be outside the Legislature, just as any Cabinet Minister may be

outside the Legislature, provided that, within a certain period—three or six months—he becomes a member of the Legislature. It does not matter whether he is inside the Legislature at the time of his appointment or outside it but qualifies himself for membership in the Legislature in the ordinary way in a definite period. It is the same position with regard to any Indian Minister.

Chairman: I suppose he might be in either House.

Diwan Bahadur Mudaliyar: He might be in either House, most certainly.

Chairman: Might he be somebody who had been appointed by the States?

Diwan Bahadur Mudaliyar: I have used the words "an elected member of the Legislature" in rather a wide sense. I consider that members who are nominated by State Governments, or as some of us hope, elected by the subjects of the States, are all elected members of the Federal Legislature. They may be nominated by the State Governments; but for our purposes I consider them elected members of the Legislature, because I feel that this phase of nomination by State Governments is a temporary phase, and as time goes on that will give place to an election either by direct or indirect vote, either by the subjects themselves or by the Legislatures in the States, or by some other method which the States may think of. I am not on that question. I include, among the elected members, representatives of the States, who come in, after all, of their own right and are not nominated by the Governor-General. Therefore, these gentlemen will all be non-official members of the Legislature—not nominated by the Executive authority of the Federal Government or by the Governor-General; and any one of them, I suggest, whether he is a member of the House of Representatives or whether he is a member of the Federal Senate, will be qualified to be an Army Member. If he is not already on either of these Legislatures, he has to become a Member of either of those bodies within a given time when he is appointed Army Member.

Then, with reference to the position of the Army Member, *vis-à-vis* the Legislature, as I say, I contemplate that we should not have the rigid system of Members of the Cabinet being confined to any particular House such as you have in this country, for instance. Members of the Cabinet will no doubt be members of one House or the other, but I should like to preserve the privilege that we now have of a right of audience in the other House being given to the members of the Lower House or the Upper House as the case may be, so that, if the Army Member is a member of the House of Representatives, he would have the right to vote only in the House of Representatives, but he would have the right audience in both Chambers. Now, My Lord, by stating that he would have the right of audience in both the Chambers and that he should be a member of one of them, I do not think I have really exhausted the description of his position with reference to the Legislature.

I should like next to dwell on the question how far the Legislature will have any voice with reference to his administration and to what extent he will be answerable to the Legislature. We have proceeded on the assumption that Defence is a reserved subject and that the Minister will be responsible to His Excellency the Viceroy. But even on that basis, studying very carefully the recommendations of the Defence Committee, I see the clear necessity of laying down that, on some aspects of this administration, the views of the Legislature will have to prevail still. The Defence sub-Committee has suggested that a scheme of Indianisation should be laid down and should be carried out. The Defence sub-Committee has also suggested that there should be a gradual reduction in the number of British troops in the country. There are similarly other questions with reference to the administration of the Army. Now, if you have a policy of Indianisation agreed upon beforehand, as I hope it will be agreed upon, then there should be some method by which the implementing of that policy can be supervised—some authority which will have the control or the supervision of the implementing of that policy so as to see whether that policy is being carried out or not. At the present time, in spite of the fact that the Army Budget is non-votable, I know the Legislative Assembly has got considerable freedom in discussing Defence matters. We cannot possibly contemplate the future Federal Legislature having any less powers than the Indian Legislative Assembly of to-day. It seems to me, therefore, that the Legislature should have the power of criticising and, to a certain extent, of limiting, the discretion of the Army Member with reference to the method in which an agreed policy of Indianisation, for instance, is being carried out by him on the administrative side.

Mr. Sastri: In other words, that aspect of the subject of Defence is not to be considered reserved?

Diwan Bahadur Mudaliyar: Yes, that is exactly what it means. That is putting it into better language than I could use.

Chairman: You meant—Indianisation not a reserved subject?

Diwan Bahadur Mudaliyar: Not in that wide sense, My Lord. Presuming that there is a policy of Indianisation agreed upon, the actual giving effect to that policy cannot be a reserved subject.

Chairman: Let me get it right if I may—agreed policy on Indianisation not to be deemed a reserved subject. Then, does that mean this, that the Legislature will be entitled to express its will as to whether the policy is being carried out and to see that it is carried out. Is that what it means?

Diwan Bahadur Mudaliyar: Yes, My Lord; the Legislature will not have authority to change an agreed policy. It will have no voice on that policy which *a fortiori* has been agreed upon and must be the policy for a prescribed period of years. After that period of years, probably, by a subsequent agreement, that policy might be changed, if necessary. During that period, however, the Legislature will have no power to alter that policy; but it must

have power to supervise, and to see that the policy is implemented and carried out in the spirit in which it has been agreed upon. As to the question of the establishment of Military Centres for training, that again has to be under the control of the Legislature to the extent that the Legislature must satisfy itself that that policy is being carried out. In these and other matters, the Army Member would be responsible to the Legislature. In other matters, as I have said, he would be responsible to His Excellency the Viceroy.

Sir Sultan Ahmed: What are the other matters?

Diwan Bahadur Mudaliyar: The technical administration of the Army.

With reference to the control of Military expenditure, the plan suggested on the last occasion was that the expenditure for the Army should be agreed upon on a contractual basis subject to a periodic revision. Therefore this amount will be agreed to by the Federal Legislature without question. We will not use the term, which horrifies some of us, of "non-voted items"; but it will be an item which will not really be subject to reduction by the Legislature. The Army Member, however, must have a certain amount of control, and the Finance Member in particular must has a certain amount of control even within the contract amount. It ought not to be open to the Army Member—and here, My Lord, I am speaking because we have some little idea of the present contract system, though it may not be the exact contract system which we contemplate for the future—I say that the Army Member cannot have the right to spend the contract amount in such a way that, at the end of the contract period, the recurring liabilities would be increased substantially, making it impossible for a revised contract to be come to except on certain basis. Supposing 45 crores is allotted to the Army to-day for its expenditure, of which the recurring items of expenditure amount to only 30 crores, and the non-recurring items of expenditure are 15 crores, it is possible that, at the next contract period, the non-recurring items of expenditure will be very considerably curtailed and a new amount may be fixed upon; but supposing, in the meanwhile, commitments are entered into, because a contract amount has been given, whereby the recurring amount of expenditure is increased from 30 crores to 40 crores, then it is obvious that, at the second stage of revision, to the extent of 40 crores your hands are tied. Take, for instance, the revision of the salaries. Supposing, for instance, because the Army has got 45 crores of expenditure at the present time, salaries are revised substantially in such a way that the recurring obligations increase, then it seems to me that, at the next period of the contract, we cannot go behind those salaries which have been revised, and therefore indirectly, and to that extent, the liberty to revise the contract is threatened. Therefore, what I am driving at is this. Though the contract amount has been fixed—though the Legislature will vote for that contract amount without question—it does not mean that the Chancellor of the Exchequer of the Federal Government would have no control over Army expenditure. He has

constantly to watch the growth of Army expenditure even within the contract amount, and to see that the recurring obligations are not piled up without his consent. Then again, My Lord, even with reference to the contract amount, supposing we have fixed 45 crores for a period of five years, within that period occasions may arise, economic disasters may take place, the revenues of the Federal Government may suddenly tumble down as the revenues of most governments have tumbled down during the last few weeks; and it may be necessary to revise the contract amount within that period. There ought to be machinery open (the same machinery and the same sort of agreement may be come to) but there ought to be machinery open if, in such emergencies, a revision is necessary.

I will give one more reason why I am somewhat insistent on this suggestion that the Army Member should be non-official. Your Lordship will see that, in the Defence sub-Committee's Report, page 62, it is stated:—

> "The sub-Committee considered that, with the development of the new political structure in India, the defence of India must to an increasing extent be the concern of the Indian people, and not of the British Government alone."

My Lord, when we speak of reserved subjects, let us be clear in our mind that we speak of them for a transitory period; that we do not contemplate a permanent reserve subject for all time to come; that we contemplate a transitional stage. If we are contemplating a transitional stage, I venture to think that we must have some machinery whereby that transitional stage may be a real transitional stage and whereby we might emerge into a final stage where conditions will be different. If we have an official Member all through, how is the non-official to get any experience of Army administration? How is this period of transition to end? How is this knowledge of Army administration to come to any non-official responsible Indian Member at all? I know that, when the great Lord Morley made the experiment of introducing Indian Members into the Executive Council, there was some diffidence expressed in this country; but there was a great deal more criticism in my own—that these gentlemen were mere "brown bureaucrats" instead of "white bureaucrats", and that they would do no good at all, and it was a reform in which nobody was interested. We have had some of these brown bureaucrats at this table, and I venture to think that, whatever criticisms we might have made during the past, we must express our indebtedness to the great and valuable contribution which they have made and which they would have been unable to make had not they occupied the position which they held as "brown bureaucrats". It seems to me, therefore, that for any useful purpose to be served with reference to the Army after the transitional stage, you must go through a stage when some of our own countrymen will be the responsible Members in charge of the Army, responsible to the Viceroy, just as Members of the Executive Councils to-day are responsible to the Governors and to the Governor-General. In that way they will gain that knowledge and

experience which will be an invaluable asset if that transitional stage should ever come to an end. I therefore plead very earnestly that, without giving up the idea of a reserved subjects in any way, and without trying to trench on that position, it would be better, both in the interests of the Army and in the interests of the development of the constitution, if the Army Member is chosen from among the members of the Federal Legislature.

As regards the Member in charge of External Affairs, my position is slightly different. I do not know how many members on this side will agree with me, but I am not insistent on the demand that the Member in charge of External Affairs—foreign affairs—need necessarily be an elected member of the Legislature, using that word in the widest sense. My reason is this. I see, My Lord, both in this country and elsewhere, that legislatures are not so completely seized of foreign affairs as they are seized of defence and other matters. The very fact that distinguished foreign ministers have been members of the Upper House in this country shows that the popularly elected Chamber does not require the same amount of control over foreign affairs—in fact, it could not very well exercise it without detriment to foreign political relations. It does not require the same amount of control over foreign affairs as it does over other matters. I would, therefore, not object even to an official being appointed to be in charge of foreign affairs. His relationship with the Legislature on these questions will be of a very meagre character. I have no doubt about that. I do not think that, even when we have complete control, including control of External Affairs, the Legislature will play a very large part in shaping foreign policy. That is done, as we all know, behind the scenes, in Cabinets and committees of Cabinets, and not by discussion on the floor of a popularly elected Chamber.

Chairman: You think there might be somebody like our Permanent Under-Secretary of State for Foreign Affairs?

Diwan Bahadur Mudaliyar: No, My Lord; I want him to have the status of a Cabinet Minister.

Chairman: I thought you said that the person who would advise the Governor on external relations need not be in the Legislature. That is what I thought you said.

Diwan Bahadur Mudaliyar: I said he need not be an elected member of the Legislature. He would certainly be nominated to the Legislature after his appointment, but he would not be chosen from among the elected members of the Legislature.

Chairman: Then you are in favour of some nominated members for the Legislature?

Diwan Bahadur Mudaliyar: I am not against this gentleman being nominated to the Legislature.

Chairman: Nominated by whom?

Diwan Bahadur Mudaliyar: By the Governor-General.

Chairman: He would nominate this gentleman who would assist him in the management of External Affairs, and his nomination would make him a member of the Legislature.

Diwan Bahadur Mudaliyar: Yes; but so far as the Cabinet is concerned, he would certainly be a Member of the Cabinet; and I visualise that these questions also will certainly come for discussion before the Central Government just like the Army questions, and that the rest of the Members of the Cabinet will be completely informed of all that is going on, the decision ultimately resting with the Viceroy on the advice of the Member in charge of that.

(*The Committee adjourned at 4-1 p.m.*)

PROCEEDINGS OF THE FORTY-THIRD MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 28TH OCTOBER, 1931, AT 11 A.M.

HEADS 5 AND 6.

5.—THE MINISTRY, AND ITS RELATIONS WITH THE LEGISLATURE.

6.—DISTRIBUTION OF LEGISLATIVE POWERS BETWEEN THE FEDERAL AND PROVINCIAL LEGISLATURES, AND EFFECT IN THE STATES OF LEGISLATION RELATING TO FEDERAL SUBJECTS.—(*continued*).

Diwan Bahadur Mudaliyar: Lord Chancellor, Last night, when we broke off, I was dealing with the question of the position of the Minister in charge of External Affairs, and I said that I had no objection to his being an official, because the relations of the Legislature to matters of foreign policy are so meagre that it would not make a very great difference whether he was an elected member of the Legislature or an official nominated by virtue of his capacity as Minister of External Affairs to either of these Chambers, and preferably to the Upper Chamber, but having the right of audience in both Chambers.

What exactly is meant by foreign affairs has not yet been defined, and the extent to which they will be "reserved" has not really been understood either. I am very anxious to make it clear at this stage that there are some affairs which may be technically called external affairs, but which in truth are not such, and in respect of which the Legislative Assembly at the present time, and the Federal Legislature of the future, must continue to have some sort of power to criticise, and probably to control. Let me take the question of the position of Indians overseas. At the present moment, Lord Chancellor, the Legislative Assembly has a right to criticise the position of Indian subjects overseas, and it has concerned itself very much with this question during recent years. If I might divide that subject, again, into two categories—the position of Indians in other Dominions of the Empire and the position of Indians in other parts of the world which are not Dominions of

the British Empire—at the present moment, to the best of my knowledge, a member of the Government is in charge of the subject of Indians overseas in the British Empire, and the Foreign Secretary is in charge of Indians in other parts of the world than the British Empire. So far as Indians in other parts of the British Empire are concerned, I am clear in my mind that the future Federal Legislature should have control both over the policy and with reference to the administration of that particular subject—what little administration there can possibly be over such a subject. So far as Indians in other parts of the world than the British Empire are concerned, I realise that the Legislature cannot have that control which it can claim to have over the first category of subjects. In any case, my view is that the Foreign Minister, if this subject should be in his control, as I trust it will be, so far as British Indians in the Dominions of the British Empire are concerned, should be amenable to the control of the Legislature in that behalf.

Turning to another subject which has recently come very much under discussion in the Indian Legislative Assembly, we are now thinking of organising Trade Commissioners in various parts of the world on behalf of India, and I believe a scheme is afoot whereby such Trade Commissioners will be appointed in various commercial centres of the world. The importance of this subject cannot be denied. We all know that, in many parts of the world, there are the Consuls and the Vice-Consuls of Great Britain and they are often the Presidents of British Chambers of Commerce in such places. We know that commercial secretariats are a necessary auxiliary to various Ambassadorial delegations in different parts of the world. Now, I have no idea of encroaching on Foreign affairs, but I think the Legislative Assembly has now some amount of control over the establishment of Trade Commissioners or commercial secretariats; and the Federal Legislature must obviously continue to have that power also.

Therefore, in respect of these two or three items the Legislature will exercise some amount of control, though technically they may be grouped under the category of External Affairs. As I have said, Lord Chancellor, both with reference to the Army and with reference to External Affairs, in spite of the fact that they are treated as reserved subjects, there are some aspects of them in which the Legislature must have some control.

Now, I ask myself, what is the position of these two Ministers, the Minister of the Army and the Minister of External Affairs, with reference to those subjects and with reference to the Legislature? Normally speaking, when the Legislature has a control over those subjects, it might be expected that the Army Member would stand by his policy and would have to resign if the Legislature did not accept his policy. At this stage I come against two difficulties. In the first place, I do not visualise the possibility of a single Member of the Cabinet resigning because his policy has not been accepted by the Legislature. In the second place, it would obvious-

ly be anomalous to expect a whole Cabinet to vacate office because the policy of the reserve Member, on a small portion of the subject which happens to be under the control of the Legislature, has not been accepted. You cannot therefore ask the Army Member to resign because, with respect to the Indianisation policy, the implementing of it has not been carried out according to the wishes of the Legislature; and you cannot expect the whole Cabinet to be turned out on a vote of no-confidence because, on a reserved subject and on a very small portion of the reserved subject, the Legislature differs from the Member in charge of that subject. It seems to me that the difficulty can only be got over in one way—that it should be understood from the beginning that, if the Legislature, on these particular subjects which have to be very carefully classified, expresses its wishes, it must be understood that the Army Member or the Member for External Affairs will carry out those wishes and that the Governor-General will see that those wishes of the Legislature are carried out. An analogy—it is not a parallel—may be found in the Swiss Constitution, where, broadly speaking, Ministers are expected to carry out the wishes of the Legislature on certain subjects. I do not suggest that is a parallel; it is merely an analogy. What it really comes to is this, that with reference to these particular subjects, the Army Member or the Member in charge of External Affairs will have to convince the rest of his colleagues on the Cabinet; and, if the Cabinet agrees with him, no question of a clash with the Legislative Assembly can really arise. If, however, the rest of the Cabinet is not with the Army Member or the Member in charge of External Affairs on this subject, then the Governor-General will have a clear indication of what action he would have to take, as the person ultimately responsible for these reserved subjects.

These are my submissions, Lord Chancellor, with respect to sub-head (vi) of Head 5.

Mr. Joshi: I should like, if I may, to put a question to Diwan Bahadur Mudaliyar. Why does he make a distinction, so far as Indians overseas are concerned, between those who go to the Dominions and those who go to foreign countries? Under the Indian Emigration Act, the Indian Legislature has power, not only to discuss these matters, but to have a final voice in the matter of Indians emigrating not only to the British Dominions but also to foreign countries—so that there is really no reason to distinguish between foreign countries and the British Dominions so far as Indians overseas are concerned.

Sir Tej Bahadur Sapru: I should like to put a question to Mr. Joshi. What does he mean by saying that the Indian Legislature has a voice? Take, for instance, the case of Indians going to the Belgian Congo. What can the Indian Legislature do with regard to Belgium or the Belgian Congo?

Mr. Joshi: The Indian Legislature has a right to prevent emigration.

Sir Tej Bahadur Sapru: That is a different matter; it is not in relation to foreign countries, but in relation to its own nationals before they depart.

Mr. Joshi: The Indian Legislature has the power to fix the conditions in which emigration shall be allowed.

Sir Tej Bahadur Sapru: But inside India, before they have departed.

Diwan Bahadur Mudaliyar: I think the answer to Mr. Joshi's question is obvious. I was looking at the matter from the other end, so to speak. I was looking at the question of relations with other countries. The Indian Legislature has no control over the relations with the Belgian Congo or any other foreign country, and even with reference to the British Dominions it has no control.

Mr. Joshi: For the matter of that, even the British Government has no control over the Belgian Congo.

Sir Tej Bahadur Sapru: It is a matter for diplomatic negotiation.

Mr. Joshi: There is no difference, therefore, between Dominions and foreign countries at all.

Diwan Bahadur Mudaliyar: I should now like to take up sub-head (ii) of Head 5, which is as follows:—

> "What is to be the number of the Federal Ministers, or, if no number is to be prescribed by the constitution, by what authority is the number in practice to be determined and modified?"

There are three alternatives on this question of fixing the number of Ministers, which I see have been adopted in various constitutions. The first proposal is not to fix any number at all, and that, I see, is the basis on which the Canadian Constitution, for example, is working. The result of it has been that the number of Cabinet Ministers has grown and grown until, at the present day, I think I am right in saying that there are 23 Canadian Ministers working the Constitution of Canada. The South African Constitution, on the other hand, has made a rigid provision and has fixed ten as the maximum number of Ministers who can work that Constitution. It cannot be altered except by way of a constitutional amendment. The Parliament has no power to increase that number. In between is the Australian model—which I recommend for adaption to Indian conditions—whereby initially the number is fixed, but power is given to Parliament to increase that number. I refer to Sections 64 and 65 of the Constitution of Australia:—

> "Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs."

I would recommend a provision analogous to this for adoption with reference to Indian conditions.

I suggest that the number may be fixed at ten for the present, the ten including the two Ministers in charge of Reserve Subjects, the Minister for Defence and the Minister for External Affairs. Roughly speaking, I would like the portfolios to be divided in the following manner: The Prime Minister (and I will later indicate what portfolios he may have); the Minister for Finance; the Minister for Trade and Commerce; the Minister for Railways and Public Works; the Minister for Customs and Inland Revenue; the Minister for Justice; the Minister of the Interior, whose portfolio will include immigration and colonization; the Postmaster General; the Minister for Defence and the Minister for External Affairs.

Chairman: What about Health?

Diwan Bahadur Mudaliyar: I did not contemplate that to be a Federal or Central subject, My Lord. That is why I have not put in a Minister for Health.

Chairman: Do you contemplate any central co-ordination of Education? At present, European education is a reserved provincial subject and Indian education is a transferred provincial subject. Do you contemplate any sort of co-ordinating central authority or not?

Diwan Bahadur Mudaliyar: I do not contemplate that.

I believe that the present portfolios of the Member in charge of Land Revenue, Health and other subjects will disappear altogether. That is an anomaly even at the present time; and I do not contemplate that, with full provincial autonomy, there will be any need for those portfolios.

Chairman: Whom do you contemplate as being in charge of minor administrations like Delhi and Ajmer?

Diwan Bahadur Mudaliyar: I have kept the Prime Minister free altogether; I have not assigned any portfolio to him. If there is to be a Minister for a group of subjects which cannot be readily included in any category, or for which a definite name cannot be given, there will be a Ministry for Miscellaneous Affairs, in which case one of these other portfolios will be attached to the Prime Minister.

Chairman: When you talk about Trade and Commerce, have you included industries in that?

Diwan Bahadur Mudaliyar: Yes, My Lord.

I have kept the Minister of Finance absolutely free to deal merely with finance. I do not want any administrative portfolio to be entrusted to him. At the present time, the Finance Member has also got some administrative control; for instance, he is in charge of Customs and Inland Revenue. I do not think it would be proper to give that administrative control to him. What happens at the present time—and I say it without any reflection whatsoever—is that the moment the finances of a State are found to be insufficient, tariffs are raised automatically, as they are the readiest means of affording revenue, or the Income-tax is raised—the Minister in

charge of Finance also being in the administrative control of these two subjects. I do not think this has worked happily for India, and I feel that the Minister for Finance should be absolutely independent of any administrative subject whatsoever, so that on all administrative subjects he may be able to bring to bear an unbiassed mind merely from the point of view of the Treasury.

Sir Provash Chunder Mitter: Who will collect the Income-tax?

Diwan Bahadur Mudaliyar: There will be a Board of Revenue under the Minister for Customs and Inland Revenue.

I must make clear another point with reference to this, My Lord. So far, we have been proceeding in India on the basis that all Ministers are of equal rank. I do not think it is necessary to predicate that. In your country there are Ministers of different ranks, if I might express it in lay language, and I contemplate that, as the number of Ministers increases, it would not be possible to have all Ministers of the same rank, but it might be necessary to have Ministers of different ranks.

Sir Tej Bahadur Sapru: Would they all be getting the same salary?

Diwan Bahadur Mudaliyar: I am speaking of salary rather than of importance. The Postmaster-General may be, from the point of view of salary, of a different status from the Finance Minister.

Sir Tej Bahadur Sapru: It is really a question of emoluments.

Diwan Bahadur Mudaliyar: Yes, it is really a question of emoluments.

Then, My Lord, perhaps I might go to sub-head (v), which Your Lordship indicated as open for discussion:—

> "(*a*) In what sense are Ministers to be responsible to the Legislature?
>
> (*b*) Is this responsibility to be collective? and, if so,—
>
> (*c*) Is such collective responsibility to be recognised and expressed in the constitution?"

I would take sub-head (vii) along with that, because the two really go together. Excluding, for the time being, the two Ministers in charge of reserved subjects, I contemplate obviously the rest of the Ministers to be responsible to the Legislature. They will, in the first place, be responsive, as all Cabinets are, to the Legislature; but they will also be responsible in the sense that, if the Legislature loses confidence in their administration, they will have to vacate office. The general phrase "parliamentary responsibility," well understood in all constitutions, is what I contemplate with reference to those Ministers who are in charge of subjects other than reserved subjects; and so far as I am concerned, I can conceive of no responsibility which is not based on the theory of joint or collective responsibility. It seems to me that there can be no real responsibility if each individual Minister can be hauled up by the Legislature and can be told he does not possess the confidence of the

Legislature. My experience of the working of the dyarchic constitution in the Provinces has made it clear that individual responsibility of Ministers makes for chaos in administration and makes for the breaking up of Ministries at short intervals. If the example of Madras is quoted as that of a Province which has fairly well worked the dyarchic system under very difficult circumstances, let me assure Your Lordship and the Committee that one of the prime reasons of that result is the fact that in Madras, we have always recognised and acted on the principle of the joint responsibility of Ministers in charge of transferred subjects. If each Minister were to go and canvass for support in the Federal Legislature, then it would not make for that unifying of policy which is essential in carrying out the administration of a sub-continent like India. Howsoever Members may be returned to the Legislature, howsoever before they enter the Legislature they may woo various and varying constituencies to find an entrance into that body, once they have come into the Legislature they must be responsible for supporting a set of persons who will be in office and in charge of the administration. I see much greater danger in thinking of responsibility of individual Ministers than in visualising the possibilities of separate or joint electorates, or whatever other manner of constituencies may be devised for returning members to the Legislature. The one thing on which we should all be united is that the responsibility of the Executive should be a joint responsibility. It is there that an amalgam must be made of varying interests, of conflicting claims and of diverse view-points; and if the administration is divided internally, that administration is bound to break up very soon indeed.

Therefore, I lay the greatest stress on the fact that the responsibility of the Executive must be a collective or joint responsibility and that individual Ministers cannot be held individually responsible for their Department. That, of course, does not mean that an individual Minister may not be asked to vacate his office by the Cabinet itself or by the Prime Minister, if he were not to discharge his duties in the manner in which he is expected to do so; but the Legislature as such can only look to the entire Government for the discharge of its proper responsibilities—it cannot single out any particular individual and say that he has failed to discharge his duties. I do not think, however, that it is necessary to embody this principle in the constitution. I would rather allow the growth of convention and understanding to take place from the very start—that Ministers are jointly responsible, and not individually responsible, to the Legislature. It is not necessary to put a specific clause in the constitution for that purpose, although such a clause finds a place in some constitutions. On this point I have no particular view to press, but I do press the view that the responsibility must be collective and joint and not individual.

Now, My Lord, how is the Legislature to enforce this responsibility? How is the Cabinet to vacate office if the Legislature is not satisfied that the Cabinet enjoys its confidence? On the last

occasion, when we discussed this subject, various expedients were devised; but there was one thought which ran throughout the discussion, namely, that it is essential to secure the stability of the Cabinet against the passing whims and fancies of a democratic House.

Chairman: That is Section 35 of the last Report, is not it?

Diwan Bahadur Mudaliyar: Yes. The Report says:—

> "For the purpose of securing greater stability to the Executive the suggestion was made, and found a large measure of support, that Ministers should not be compelled to resign save in the event of a vote of no confidence passed by a majority of at least two-thirds of the two Chambers sitting together. Ministers against whom less than two-thirds of the votes have been cast on a motion of no confidence would not, however, for that reason alone, continue to enjoy to any greater extent than before the confidence of the Legislature who would still be able in other ways to make effective their want of confidence."

This is the important point:—

> "But the sub-Committee are of opinion that some means should be devised whereby in the interests of stability, an adverse vote should not on every occasion necessarily involve the resignation of the Ministry and that the subject should be further explored."

Now, My Lord, I wholeheartedly support that last sentence. I took that view on the last occasion, and I do not see any reason to change that view. We must secure the stability of the Ministry against every passing gust of popular passion. My belief in democracy is not less than that of other Members here, but my belief in the importance of the administration and the vastness of the concerns that will be entrusted to the Cabinet, and therefore in the need for a Cabinet reasonably sure of its position, is so great that I am willing, notwithstanding the possible departure involved from technical theories of democracy, to make some provision for the reasonable stability of the Ministry.

Dr. Ambedkar: Is not it even here open to the Prime Minister to interpret the resolution of no-confidence or defeat in the House? There is no obligation on him to resign.

Diwan Bahadur Mudaliyar: I am just coming to that. As I have followed the working of various democratic constitutions, latterly at any rate, and since the War in particular, the tendency has been not to look at every single adverse resolution of the Legislature as necessarily expressing want of confidence in the Ministry. The old Gladstonian idea that the Legislature cannot turn down a single comma of a draft Bill introduced by an executive government is not to-day as effective as it was before; and Cabinets have come to realise that they need not treat every adverse vote of the Legislature as necessarily implying want of confidence in the Ministry.

Therefore, My Lord, in the first place, I do not think that every resolution passed by the Legislature though opposed by the Ministry, should be treated as a vote of no-confidence at all; and, in the second place, I would not treat an adverse vote on any section of a Bill as a vote of no confidence, unless the Ministry itself chooses so to regard it. I would not make an adverse vote a necessary reason for thinking that the Ministry has lost the confidence of the House. I contemplate a motion of a direct vote of no-confidence being tabled and passed by the Legislature—a direct vote of no-confidence which would involve the resignation of the Ministry.

Last time we discussed various percentages of votes. Since then, having given the best consideration to the subject that I can, I have come to this conclusion, that a direct vote of no-confidence cannot be initiated unless a specific number of members of either House express a desire that such a motion should be taken up. I adopt the Czecho-Slovakian example, which has been referred to by Sir Tej Bahadur Sapru for the purpose. Supposing a third of the members of either the House of Representatives or the Senate indicate a desire by a signed memorandum to that effect.

A. Member: A third of the members present?

Diwan Bahadur Mudaliyar: No. Supposing a third of the members indicate a desire that they want a resolution of no-confidence to be discussed, it should be obligatory on the Cabinet to arrange for the discussion of that motion. Secondly, that motion will be discussed at a Joint Session of both Houses, the House of Representatives and the Senate sitting together and discussing the motion. Thirdly—and here I come to the question of majorities—I shall be content if, by an absolute majority (that is, by a majority of the total strength of the two Houses as distinguished by the number of persons present) that motion is carried, and then the Cabinet will have to vacate office. On the last occasion, I have to remind the former members of the Committee, the suggestion of Sir Tej Bahadur Sapru of a two-thirds majority was not pressed by him and was in fact withdrawn when it was shown that, in working out the percentages and the actual figures, it might easily happen that, on that basis, a Cabinet will continue in office notwithstanding the fact that the entire section of British Indian members did not express confidence in them. There is another reason why I have resorted to this expedient of an absolute majority. We have discussed at great length the procedure to be adopted in carrying out legislation. The encouraging appreciation which Your Lordship has extended to each one of us at the end of our speeches has made each one of us think that our views have held the field. I am looking forward with interest therefore to the Report which Your Lordship will place before us on Monday, and which will give us a real idea of what the Committee's decision on these subjects is likely to be. I assume for the time being that Your Lordship's Report will state that an absolute majority is required at a Joint Session for the purposes of carrying out legisla-

tion where one House differs from another House. If that is so, the anomaly which was foreseen on the last occasion will not arise.

Mr. Jinnah: What do you put down as the percentage of absentees?

Diwan Bahadur Mudaliyar: I do not put down any definite figure for the percentage of absentees. It depends upon the crisis. It depends upon the determination of the members of the Legislature to get rid of an odious Ministry. If the Ministry has made itself so odious, I expect the percentage of absentees will be less than one. It depends on the interest which the members of the Legislature take in their own Executive. If they are keen on turning out a Ministry, I expect every man committed to that position to be present and cast his vote.

Mr. Jinnah: What do you visualize?

Diwan Bahadur Mudaliyar: Judging from the experience of a Provincial Legislature, where votes of no-confidence have been directly discussed (and they have been discussed in the Madras Legislative Council), I put down the percentage of absentees at two at the most. We were able to record, out of 124 votes, 122 or so on the last occasion when a direct vote of no-confidence was debated with regard to the Madras Ministry in 1926.

Mr. Jinnah: What do you take it as for all India?

Diwar Bahadur Mudaliyar: Prophesy is a dangerous thing.

Mr. Jinnah: I know that you are not a prophet; I was only trying to get your view.

Diwan Bahadur Mudaliyar: I have already told you, Mr. Jinnah, that it really depends upon the crisis upon the extent to which the Ministry has made itself odious, and also on the organisations which will have to be built up if democratic government is to be introduced. At any rate, at the outset I think, on a real crisis, not more than 5 per cent. would be absent, if that would satisfy Mr. Jinnah as a basis to go on.

Mr. Jinnah: I am not here to be satisfied; I am just trying to seek information, because you know very well, Mr. Mudaliyar, that in the Assembly—you have been there and I have been there—on most critical motions the absentees bear a very large percentage.

Diwan Bahadur Mudaliyar: That may be so, but I also remember—and this has to be said in favour of the absentees—that, after all is said and done, in the last constitution many people felt that the position of the Legislative Assembly was not going to be of any real importance; and I would appeal to you to get out of the rut of old ideas with reference to the Legislative Assembly and think of the future Federal Assembly with the ideas involved in that, of being able effectively to carry out your ideas.

Mr. Sastri: We are all going to grow wings in the future!

Mr. Jinnah: I was only pointing out the danger. My point is this, really that, even with all the desire in the world to get out of

a rut, you cannot possibly get a full attendance because of the distances and the various difficulties that will arise. I feel that there will be a very large percentage of absentees, and the difficulty that I feel is this, that in that case the absentee votes will be in favour of the Ministry.

Diwan Bahadur Mudaliyar: I contemplate just the reverse. The absentees are those who are generally afraid to give a vote against a Minister. Those who are anxious to support the Minister, those who are committed to the carrying on of the Ministry, will certainly be present. Those who are determined to oppose the Ministry will also be present. The absentees are just those people who want to run with the hare and hunt with the hounds. They can never be brought to the Legislature under any constitution.

Mr. Jinnah: If the argument is a sound one, that the absentees will not be more than one or two per cent., then why insist on the absolute majority? Why not say those present?

Mr. Jayakar: If you require an absolute majority, all the absentees will count as so many votes for the Ministry.

Mr. Jinnah: That is what I say.

Mr. Joshi: May I put it in this way, Lord Chancellor, that those who are indifferent will be counted, as Mr. Jayakar has said, for the Ministry; and we have to consider whether it is really for the Minister to show that he has support instead of for the Opposition to show that the Ministry has no support.

Mr. Jinnah: If you are so sure that we shall get out of the rut, and that there will be almost 99 per cent. present, then why insist on an absolute majority?

Diwan Bahadur Mudaliyar: If these conundrums are followed to their logical extent, Mr. Jinnah will be in the same vicious circle in which I think I shall find myself.

Mr. Jinnah: I am not in a vicious circle at all. I am presenting facts to you; that is all.

Diwan Bahadur Mudaliyar: I am proceeding on the basis that a snatch vote will not do. I proceed on the basis that a certain amount of stability is requisite for the Ministry.

Mr. Sastri: If there is no special vote of no-confidence, the Ministry will stand.

Mr. Joshi: What you are really doing is to give the benefit of indifferent people to the Ministry.

Diwan Bahadur Mudaliyar: I contemplate two positions. If a Ministry is defeated, either there will be a dissolution or another Ministry will be constituted. If there is a dissolution, there is no need to trouble about it. If another Ministry is to be constituted, you must show that that Ministry could also work; and unless the Opposition is prepared to get an absolute majority on its side, it cannot work. Therefore, I insist on a absolute majority being shown on the vote of no-confidence itself, so that the Governor-

General may call on the Leader of the Opposition to form an alternative Cabinet. If it is merely a quesion of defeating the Ministry and no progress afterwards except by way of dissolution, I can understand the position of Mr. Jinnah. But I go further, and I say there ought to be a positive result also out of a vote of no-confidence; and in the large majority of cases I look forward to the positive result of an alternative Ministry, rather than the negative result of a dissolution. If an alternative Ministry is to be formed, I take it that that Ministry should at any rate have an absolute majority to carry on the work; and unless it is shown on the vote of no-confidence that that absolute majority exists, it will not really be possible to form that alternative Ministry.

Mr. Joshi: Supposing a Legislature consisted of three hundred members. One hundred members are indifferent as to which Party forms the Ministry. Out of the remaining two hundred members, fifty members are for the Ministry and one hundred and fifty members are against the Ministry. Will you keep that Ministry in power?

Diwan Bahadur Mudaliyar: Mr. Joshi, your hypothesis shows that we are not ready for self-government.

Mr. Joshi: I do not know whether you are or not.

Diwan Bahadur Mudaliyar: If one hundred members are indifferent, what will be the position of any Cabinet that is formed under such circumstances?

Mr. Joshi: They may form a group.

Diwan Bahadur Mudaliyar: In any case, My Lord, I may not be as good a democrat but I do believe in the stability of a Ministry, and this is as far as I am prepared to go with reference to the stability of Ministries. Other expedients of a more rigid character have been proposed. I think, from the criticism that I have met, that mine is a fairly workable medium, which can be accepted, of an absolute majority being required to turn out a Ministry.

Then, there is sub-clause (*c*) of sub-head (vii):—

> "whether or not a Ministry would be justified in retaining office if, on any given matter, they are accorded the support of one Chamber but denied that of the other."

We have already suggested the expedient of a Joint Session where there are clashes like that; and if that is to be fully followed, if does not matter if one Chamber denies support to the Ministry while the other Chamber gives support to the Ministry. These conflicts will be dissolved by Joint Session; and, the vote of no-confidence being a joint vote of the two Houses, this proposition will not present any very serious difficulties.

Therefore, My Lord, in the first place, I contemplate joint responsibility of the Ministers; in the second place, I press for the stability of the Ministry; and, in the third place, I suggest that they should be removable from office on a vote of no-confidence by a bare majority. Of course, I do not exclude the possibility of a Cabinet resigning otherwise than on a vote of no-confidence. They

may feel that their position with reference to the Legislature is getting so difficult that they may voluntarily vacate office. They may not wait for the motion of no-confidence. I am only suggesting the obligatory measures that are required for the vacation of office by a Cabinet, and at the same time I must enter a caveat against this position. It ought not to be open to the Governor-General to dismiss a Cabinet otherwise than on a vote of no-confidence. It ought not to be open to the Governor-General to say that, although a vote of no-confidence has not been passed against the Cabinet by the required majority, still he does not think the Cabinet possesses enough confidence with reference to the Legislature, and, therefore, that it ought to vacate office. These are the two possibilities I wish to avoid; first, that the Governor-General should not dismiss his Ministers by his own wish; and secondly, that the Ministry may have to resign of its own volition, apart from a vote of no-confidence carried in the manner that I have suggested.

Sir Tej Bahadur Sapru: Lord Chancellor, I confess that, in speaking on the various questions which have been occupying the attention of the Committee since yesterday afternoon, I feel somewhat handicapped. First of all, I feel handicapped because, in dealing with a big question of a constitutional character, you cannot very reasonably and logically divide that question into so many parts and deal with each part separately, irrespective of its relation to the entire whole. Secondly, because I feel that we covered the ground, more or less, on the last occasion, and a whole scheme of responsibility at the Centre was placed by some of us, including my humble self, before the Conference last year. Views were expressed on both sides of this Federal Structure Committee either in support of the scheme which was formulated by me or against that scheme; but I mean no disrespect to the Government of the day here when I say that, so far as they were concerned, they never favoured us with their conclusions of a definite character last year. My Lord, it has frequently been said in English politics that India ought not to be treated as a party question. Luckily or unluckily—you can take it either way, according to your own point of view—is so happens that to-day I hope I am right in interpreting the results of the General Election when I say that you have got, or are going to get, a National Government; and if a National Government means anything, it means a Government of all parties. I am entitled, therefore, to expect that this newly elected Government will have a National mind, and, if I may say so, a broad mind on this question.

Well, I do not really think that the time has come when some lead in this matter should be given by those representing the Government and other members of the British Delegations. I admire Mahatma Gandhi for the very wise and philosophic rule of silence which he has adopted on Mondays, but I should not admire the Government or British Delegation were they to follow Mahatma Gandhi's example all the days of the week! I therefore expect that, at some time or other, the Government will assure us that

they have got a mind of their own on this matter—that they have made up their mind and that they are prepared to disclose this mind. Frankly, I do think that, so far as we Indians on this side are concerned, we have kept nothing up our sleeves. Whether we agree among ourselves, or whether we do not agree among ourselves, whether our position is right or is wrong, we have frankly put forward our views in regard to responsibility at the Centre; and I do think that we should meet with a satisfactory response on this question at some time or other in the course of this week, or possibly next week.

Now, My Lord, we are discussing the various questions which were indicated by Your Lordship yesterday, minus certain forbidden questions. It seems to me rather difficult for any one of us to speak on the questions, the discussion of which has been permitted, without either directly or indirectly going beyond the limit prescribed. I will obey Your Lordship's behest of yesterday to the best of my ability; but I can only preface what I have to say by one observation, namely, that when we are talking of the position of the Army Member, or of the position of the various Members which will form the Cabinet, what is really at the back of our mind is responsibility at the Centre. I draw Your Lordship's attention to question No. (vi), which you permitted us to raise and discuss yesterday, and which runs as follows:—

> " What is to be the relationship of the persons appointed by the Governor-General to assist him in the administration of the ' Reserved ' portfolios . . . . ."

The moment you turn to that word " reserved," it implies that there are going to be some portfolios which are not of reserved character. Then the question goes on:—

> " . . . . . to (*a*) the Legislature? (Are they, for example, to be, or become, members of one or other Chamber, with the usual rights as such to speak and vote, or are they merely to have the right to speak in either Chamber, with no power to vote?); (*b*) the Council of Ministers? (Are they, for example, to attend all meetings of Ministers, or only when directed to do so by the Governor-General?) "

Similarly, the various other questions which have this morning been discussed with such great ability by my friend, Diwan Bahadur Mudaliyar, also imply that, without directly raising the question of responsibility, we are really proceeding on that assumption. If we are not proceeding on that assumption, then I would respectfully venture to submit that all this discussion is meaningless and insignificant.

Now, My Lord, I will take up the questions which have been prescribed by Your Lordship and which have been laid open to discussion. Take, for example, question No. (vi): " What is to be the relationship of the persons appointed by the Governor-General to assist him in the administration of the ' reserved ' portfolios in regard to the Legislature . . . . . ." and in regard

to the Council of Ministers? Now, the whole underlying basis of this question is that there will be certain portfolios—we will call those portfolios X and Y—which will be held by Ministers not of a popular character. In other words, these Ministers shall not be responsible to the popular vote, but shall be responsible for the conduct of their affairs to the Crown or to the Governor-General. It may be a very anomalous position, but this is the position that we contemplated at the last Session of the Round Table Conference; and, facing that anomaly, we have got to ask ourselves—*how can* we fit in these two official Ministers—or non-popular Ministers, to use a better expression—with the entire scheme which postulates that the rest of the Ministers shall be responsible to the vote of the Legislature? That is really the meaning and significance of this question. Now, so far as the scheme contemplated the existence, or rather the continuance for the period of transition, of certain subjects which Your Lordship has called Crown subjects, I, at any rate, stand by that. That was my view last year, and that continues to be my view this year.

But there were two questions which I raised last year, and which, with Your Lordship's permission, I shall try further to elucidate this morning. One is, if these Ministers, who will be in charge of "reserved" portfolios, will owe their appointment to the Governor-General and will be responsible to him, what exactly will be their position in the Cabinet? I ventured to point out last year that it would be most unfortunate, and from a practical point of view undesirable, if we were to divide our Ministers for the purposes of Cabinet work into two classes. In other words, I suggested, and I do not suggest again, that we should insist upon unity inside the Cabinet, unity to be achieved with difficulty, but still always to be aimed at; and for that reason I suggested, and I do suggest, that, although these Ministers in charge of the "reserved" portfolios will owe responsibility in the technical sense of the term to the Crown, yet inside the Cabinet I should make no distinction between them and any other class of Ministers. I should permit them to come into the Cabinet, to take part in discussion of subjects generally, and not to confine themselves only to subjects within their own portfolio, to vote inside the Cabinet whenever occasion may arise for voting, and then, when they go into the Legislature, to present a united front to the Legislature. I think that, so far as the questions relating to these "reserved" portfolios are concerned, these Ministers will, to a very great extent, be responsible to the opinion of the Legislature; but occasions may arise when, consistently with their duty to the Crown, they may find it difficult to be responsible. When such occasions arise, I contemplate that an adverse vote of the Legislature on matters within the purview of those portfolios shall not mean that those two Ministers will be necessarily thrown out. At the same time, I do contemplate that, when there is an adverse vote recorded by the Legislature against the Ministry as a whole, on any matter which is within the exclusive jurisdiction of the Legislature, then the whole Ministry—on the principle that the Executive must be a united Executive—will go

out of office. It may be open to the Governor-General, when he comes to appoint a new Ministry, to re-appoint the official Ministers or the non-popular Ministers, or to appoint some other persons; but the essential feature of it is this, that from the very start we must ask the Cabinet to work as a single unified and unitary Cabinet inside the charmed circle of the Government and also in its relation to the Legislature. Now, some people criticise this scheme as amounting to dyarchy. I do not wish to enter into any controversy—if it does please them to characterise it as dyarchy, well, let them indulge in that criticism. But in its essence it is not dyarchy. There are some vital points of difference between dyarchy, as conceived by the authors of dyarchy, and as actually worked in practice, and the system which I suggested last year.

My Lord, dealing with the question of the Ministers in charge of the Army portfolio and the portfolio of External Affairs, there are one or two observations which I would like to make. You cannot completely envisage to yourselves the functions and duties of the Ministers in charge of these portfolios unless you discuss the bigger question of the Army policy and the bigger question of External Affairs. Now, there are many things connected with the Army which, in my humble opinion, could be safely transferred to the control of the popular Legislature, while there are other things which it would not be safe to transfer at the present moment, but which may be transferred after a few years. I refrain from going into those questions because I do hope and believe that some day or other, before this Conference is over, the National Government and Your Lordship may give us a chance of raising the bigger issue with regard to the Army and with regard to External Affairs. Meanwhile, I will content myself by pointing out that the true, legal and constitutional position with regard to the Army in India is that the Army is maintained by the Crown. You may look into the provisions of the Government of India Act from the beginning to the end, but you will not find anything more than a reference to the appointment of the Commander-in-Chief, or rather to the position of the Commander-in-Chief in relation to the other Members of the Executive Council. That is not consistent with responsible government. The Army is absolutely independent of the vote of the Legislature. This is exactly the position that obtains there, and unless you have a definite provision regarding the constitutional, legal and financial position of the Army in India, I venture to think that the position of this Army and your Army Minister will not be a very enviable one in the future. Therefore, if we want to discuss exactly the position, the functions, the duties and the responsibilities of the Members in charge of these portfolios, we have got to discuss those questions independently and arrive at certain conclusions.

Will Your Lordship be pleased to turn to Section 33 of the Government of India Act? You will find that Section says:—

> "Subject to the provisions of this Act and rules made thereunder, the superintendence, direction and control of the

civil and military government of India is vested in the Governor-General in Council, who is required to pay due obedience to all such orders as he may receive from the Secretary of State."

I will invite Your Lordship's attention, by way of comparison, to certain sections in the Australian Constitution. Take, for instance, Section 61, which says:—

> "The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth."

You will have to have something of that kind in the Indian Constitution ultimately, though for the time being, consistently with the scheme which I have just foreshadowed, possibly the Governor-General will owe a certain amount of responsibility to the Secretary of State during the period of transition. It must be distinctly understood, however, that that cannot be a permanent feature of the constitution.

Now, My Lord, I will say no more about the Army, as I hope to have a further opportunity of doing so if you decide to give us an opportunity of discussing the bigger question of the Army. I shall then wish to say a great deal more on questions connected with the Army; but, at the present moment, I will not deal with the position of the Army Minister in any greater detail.

With regard to the Minister in charge of External Affairs, my friend, Diwan Bahadur Mudaliyar, has said that there is a great deal in the portfolio of foreign affairs which could easily be transferred to popular control at the present moment. With that general observation and with the details concerning it, to which Diwan Bahadur Mudaliyar has referred, I am in entire agreement.

My friend, Diwan Bahadur Mudaliyar, made one observation with regard to the personnel of the Ministers who will be in charge of the portfolios of the Army and Foreign Affairs. He said that, so far as the Army is concerned, it should from the very start be placed in charge of a non-official member of the Indian Legislature. I ventured to make the same suggestion in a somewhat different form last year. I said that I would leave it to the discretion of the Viceroy to select a non-official member as Member in charge of the Army portfolio, though I would prefer that he started by selecting an Indian member of the Legislature. I am quite prepared to go as far as Diwan Bahadur Mudaliyar has gone to-day, and I do suggest that, if our men are to acquire knowledge and experience of Army affairs, it is better that they should make a beginning now than that you should start them after ten or fifteen years, or that you should use the absence of experience on our part as an argument against advance in that direction.

As regards the Foreign portfolio, my friend suggested that, so far as the Foreign portfolio is concerned, it might continue for-

some time to be in the hands of an official Member. Personally speaking, I would make no rigid rule even in regard to that. I would leave ample discretion to the Governor-General, though I hope that, in order to give a chance to Indians to acquire knowledge of foreign affairs, the Governor-General would use his discretion—if not immediately, after a few years—and employ Indian talent in regard to those matters also.

I will now pass on to the question of the number of the Ministers. Here again, I feel it difficult to discuss the question of the number with any degree of certainty. At the present moment, we can only roughly say what will be the subjects of administration which will have to be divided among the Members of the future Executive of the Government of India. I do not think the number of ten, suggested by Diwan Bahadur Mudaliyar, is extravagant. Probably, in course of time, the number may have to be increased; but to begin with, I should be quite content with anything like nine or ten. That, of course, pre-supposes that we shall have, before we finish our work, come to a definite understanding as to what will be the subjects within the control of the Government of India, and what will be the subjects within the control of the Provincial Governments.

I do think that, if Law and Order are transferred to the Provinces, the work of the Home Member of the future will be considerably reduced.

Sir Sultan Ahmed: Are not Law and Order already Provincial subjects?

Sir Tej Bahadur Sapru: Yes, but they are not absolutely transferred subjects.

Sir Muhammad Shafi: Law and Order are already Provincial subjects.

Sir Tej Bahadur Sapru: That is what I am saying but they are reserved. You know as well as I do that the Home Department of the Government of India is very busy from morning to evening in controlling Law and Order in the Provinces.

Sir Muhammad Shafi: They have what may be described as provisional jurisdiction.

Sir Tej Bahadur Sapru: You are at cross purposes with me. You are thinking that I am raising a communal issue. I am doing nothing of the kind. I am as strong an advocate of the transfer of Law and Order to the popular control as you are in the Provinces. What I am saying is that, once Law and Order are transferred to the Provinces, the position of the Home Member of the future will be very different from the position of the Home Member at the present moment.

Sir Muhammad Shafi : It is with reference to that statement of my learned friend that I remark that Law and Order are already Provincial subjects. No doubt, the Home Member has a certain measure of control; but that is an entirely different matter. In

the classification of subjects, Law and Order are already Provincial subjects.

Sir Tej Bahadur Sapru : I am not denying the very patent fact that Law and Order are Provincial subjects; but that is not enough. They must be not only Provincial subjects, but they must be transferred subjects—that is to say, they must be subjects which will come under the control of a popular Minister. If that is so, I venture to think that Sir Muhammad Shafi will agree with me that the duties of the Home Member of the Government of India will practically come to an end so far as Law and Order are concerned. Therefore, the Home Member of the Government of India, being relieved of a great deal of work in connection with Law and Order, will probably apply himself to many other subjects relating to the internal administration which will be within the control of the Federal Government; and it is for that reason that my friend has properly given him the appellation of a Minister of the Interior.

I will not say definitely what the portfolios should be until I know what are the subjects which are going to be assigned to the Federal Government; and I should leave the formation of the portfolios to the future Prime Minister, in consultation, probably, with the Governor-General of the day. But there is one thing here on which I want to be as explicit as I possibly can. If there is to be a Ministry in charge of certain portfolios, I expect that that Ministry will pursue and act upon the principle of collective responsibility, which, in my humble opinion, means that there will be a Prime Minister who will submit the names of his colleagues to the Governor-General of the day. If this is not what is meant by responsibility at the Centre—if what is really aimed at is that the Governor-General should be at liberty to select his Ministers belonging to different groups of political thought and different political parties—then I, for one, do not envisage the future with any degree of hope.

Mr. Zafrullah Khan : Sir Tej, may I ask which subject you are now discussing?

Sir Tej Bahadur Sapru : I am discussing those questions generally.

Mr. Zafrullah Khan : They are questions in which we are concerned as representing the Muslims.

Sir Tej Bahadur Sapru : I am discussing the question that was discussed by Diwan Bahadur Mudaliyar—sub-head (v).

Mr. Zafrullah Khan : We shall have to re-consider whether we can take part in any part of this discussion at all, because some of it relates to matters which raise communal issues.

Sir Tej Bahadur Sapru : I am discussing sub-head (v) *(b)*—"Is this responsibility to be collective?" Well, if it is not to be collective, then I submit, for one—I have a very strong feeling in this matter—that you will have the same experience repeated at the Centre as you have had in the Provinces—one Minister going

one way and another Minister going another way, without there being any nexus of political allegiance and political party to unite the two.

Now, My Lord, I pass on to the other questions which were discussed by my friend, Diwan Bahadur Mudaliyar. He said—and this is also what I submitted last year—that the one principle which we ought to aim at, in building up the constitution of the future executive government of the Government of India, is that there must be a fair degree of certainty and stability about our Executive. I entirely endorse that. The principle of stability has been sought to be enforced in post-war constitutions in various ways. I ventured to quote the Czechoslovakian model last year in my speech, and I suggested that, whenever there was a question of no-confidence to be raised, we might either follow the Czechoslovakian model of requiring one-third of the members of the Legislature to notify their vote of no-confidence, and that question being handed over to a special Committee of the Legislature to report, or, if we were not prepared to impose that limitation at the beginning, we might provide for a special majority by which the Executive might be thrown out. I am perfectly well aware that this latter part of my suggestion has been very strongly criticised, and by none more than by the Indian Liberals. Well, so far as I am concerned, I am unrepentant; and I do think that, having regard to the new experience that we are going to have, and having regard to the fact that, for the first few years, or possibly for the first fifteen or twenty years, party demarcations in India will not be so clear—personal issues will be mixed up with public issues, there will be many other extraneous considerations coming in—it is far more desirable that we should accept the principle of a special majority for the extension of the life of the Executive than that we should leave it to a simple majority. It is for that reason that I suggest it. I never committed myself to the number—two-thirds, three-quarters, one-third, or anything of the kind. What exactly that majority will be is a question which can only be determined when we know the exact numerical strength of the Legislature, the character of the Legislature, the functions and the powers of the Legislature. On that point, My Lord, I see no reason to modify my opinion, although I have paid the most respectful attention and consideration to the criticism that has appeared on that point in India.

Again, coming to the question of absolute majority or simple majority, which was raised by my friend, I personally think that, from a practical point of view, the question will not be one of very great importance. Once you accept the principle of a special majority, or once you accept the Czechoslovakian model of referring the vote of no-confidence previously to a Committee of the House, the question of absolute or simple majority seems to me to lose all importance. But if our friends here would be more contended with a simple majority on the lines suggested by some of them, I would not object to that.

There remains only one more question for me to deal with. That is the question which has been very frequently raised in India, and to which reference was also made this morning by my friend, the Diwan Bahadur. It has been asked whether, under the constitution upon which we have been working since last year, we contemplate the representatives of the Indian States taking part in matters which will be of a purely British Indian character. This question was also discussed last year, and I believe I am right in saying that His Highness The Maharaja of Bikaner and His Highness The Nawab Sahib of Bhopal referred to that more or less in the course of their speeches. They said that, so far as they were concerned, they were not anxious at all to take part in matters which did not relate to them or in matters which affected British India alone; but where the question of the extension of the life of the Executive was concerned, they would claim a voice in this matter, for the very obvious reason that the Government would belong to them as much as it would belong to British India. Now, My Lord, I do not think that that is a matter which need very seriously disturb the peace of our minds. I believe there is a sort of convention which has grown up in the House of Commons which has a bearing on this. I think a convention has grown up in the House of Commons that, on the Scottish vote, there is no voting by English Members.

Sir Samuel Hoare : I am sorry to contradict Sir Tej Bahadur Sapru, but that is not so. What usually happens in the case of the Scottish debates is that the English Members take a day's holiday from the House of Commons; but there is no convention that English Members do not vote on the Scottish Estimates. Where the convention comes in is in the case of the Standing Committee for Scottish questions. As Sir Tej knows, there are several Standing Committees of the House, and one of them is a Scottish Committee; and on that Scottish Committee there are only Scottish Members. Actually, on the floor of the House, however, any Member may take part.

Sir Tej Bahadur Sapru : Is not the effect of your taking a holiday that you refrain from voting? You do not send your votes by post or telegram when you take a holiday?

Sir Samuel Hoare : No, we do not, but we refrain from voting rather because we wish to take a day off than because we feel we should not take part in the Scottish debate!

Sir Tej Bahadur Sapru : Well, I hope that our friends from the Indian States are sporting enough to take holidays on those days when we are discussing questions in which they are not directly interested, so that a convention may grow up similar to that of the Scottish Committee. That is what I had in view. Therefore, constitutional purists in India, who criticised this part of the scheme on the ground that the representatives of the Indian States will secure a whip hand or become a dominant factor, and therefore will have a voice in our affairs while we shall not have one in theirs, forget that there is a good deal in the written consti-

tution which can be supplemented by the growth of healthy conventions and understandings. That is all I had in view, and that is what it seems to me to be perfectly reasonable to aim at.

Mr. Sastri : I did not quite follow Sir Tej Bahadur Sapru. Does he intend this voluntary abstention, on the pretence of a holiday, to apply to votes of no-confidence on British Indian matters or to apply all round?

Sir Tej Bahadur Sapru : I am afraid that is not what I intended or had in mind. My point is really this, that on all other matters the ordinary Parliamentary procedure will be in full force; but, when it is a question of turning out the Executive by a special vote of no-confidence, then in regard to that matter, and that matter alone, I would give the Indian States a voice, because the Government is as much theirs as ours.

Mr. Sastri : You would give a definite voice, then?

Sir Tej Bahadur Sapru : Even on purely British Indian subjects. My answer to the criticism is that votes of no-confidence are not of daily occurrence. If they were, then, of course, you could not run your responsible government.

Mr. Joshi : Then how does the question of a holiday arise?

Sir Tej Bahadur Sapru : On other questions.

Mr. Sastri : On other questions you would not bar them out by rule—you would only leave it to a convention?

Sir Tej Bahadur Sapru : Yes, to a convention.

Mr. Sastri : I wish to ask Sir Samuel Hoare whether every English Member takes a holiday on the days when the Scottish Vote is taken, or whether certain English Members remain and take part in the debate and vote.

Sir Samuel Hoare : I could not say categorically that they do not take part, because a few of them do, and certainly there is no distinction in the Rules of the House between a Scottish Debate and any other. Any Member is entitled to take part if he wants to.

Mr. Sastri : On questions of no-confidence there is a definite understanding that vote may be given, but in the other cases it is to be left to convention. Why should there be a convention on one side and a rule on the other?

Sir Tej Bahadur Sapru : My answer to that is that it would not be fair for either section of the House to turn out a common Executive by itself. It must be with the consent of both sections.

Mr. Joshi : You are proposing that they should have statutory power to vote on all subjects?

Sir Tej Bahadur Sapru : Yes.

Mr. Joshi : If that is so, you need not provide specially for giving them a vote in the case of a motion of no-confidence?

Sir Tej Bahadur Sapru : I am envisaging the possibility and the probability of a convention growing up on that point. So far

as the statute is concerned, I would not divide the members of the Legislature into Class A and Class B. I would leave it to the good sense of the members not to interfere in matters which do not relate to their part of India.

Mr. Iyengar : Do you contemplate a similar convention to grow up that where questions involve a British Indian issue, the Indian State representatives might well be indifferent as to how the Ministry is turned out?

Sir Tej Bahadur Sapru : So far as the question of the extinction of the life of the Executive by a special vote of no-confidence is concerned, I make no distinction between the two halves of India; but in regard to other matters . . .

Dr. Ambedkar: Would you mind specifying some of the matters?

Sir Tej Bahadur Sapru : Central subjects; the Penal Code; the Civil Procedure Code; Income-tax. There are many things which do not relate to the Indian States.

Dr. Ambedkar : You mean ordinary legislation?

Sir Tej Bahadur Sapru : Yes.

Sir Muhammad Shafi : May I put a question to Sir Tej? Supposing there is a vital measure relating to British India before the Legislature . . .

Sir Tej Bahadur Sapru : Relating to British India alone?

Sir Muhammad Shafi : Yes———and the Indian States' representatives are on a holiday when that measure is being discussed. Supposing, on that vital measure, the Ministry is defeated—the Legislature rejects the measure. What will be the position?

Sir Tej Bahadur Sapru : I am afraid you did not listen to me. I said, in regard to all other matters, I would leave the ordinary Parliamentary procedure to remain in force. For instance, never mind whether they are present or not; if a Ministry is defeated on a vital question, then it is not a matter of their being turned out by a vote of no-confidence. It is a matter of their good sense, and they have got to resign.

Sir Muhammad Shafi : In that case, my learned friend draws a distinction between a Ministry having to resign on a vote of censure (if such a vote is passed) and its having to resign if it is defeated on a vital question?

Sir Tej Bahadur Sapru : Yes. That has been the basis of my argument, from the beginning.

H.H. The Nawab of Bhopal : May I make the position of the States quite clear? They are not at all keen or anxious to vote on any matters which are the concern of British India.

Sir Tej Bahadur Sapru : That was my impression, and I hope I represented Your Highness's view correctly.

Mr. Zafrullah Khan : Supposing this convention which you want is actually established. Do you contemplate that, on those

particular days on which British Indian questions are being discussed, those representatives of the States who happen to hold portfolios will still be present and defend their point of view?

Sir Tej Bahadur Sapru : Yes. The Executive is quite different. Therefore, My Lord, I really see no difficulty. If the utmost limit to which the criticism can go is that it is anomalous—that it is not perfectly logical—my answer is very simple. No constitution, written or unwritten, could bear the test of a strictly logical examination. What we want really is a workable constitution, and not a constitution which, from an ideal point of view, would be treated as a democratic constitution.

My Lord, I believe that, on the questions which were thrown open by Your Lordship for discussion, I have said everything I want to say; but there will be many more points which will arise when the bigger question which has been reserved, if I may say so, and which is still a Crown subject so far as the discussion is concerned, is thrown open. When that reservation is removed, then, probably, I shall have to say a great many things more which would be out of place at this particular moment; but before I conclude, I wish again to repeat my warning that the whole discussion of these permitted questions proceeds on the assumption that there is to be responsibility at the Centre. Otherwise I do say, with great regret, that we shall find at the end that we have been indulging in a solemn farce.

Mr. Zafrullah Khan : May I say a few more words by way of explanation? Speaking entirely for myself, I realise the difficulty of discussing piecemeal certain sub-heads that are intimately connected with each other. I therefore quite sympathise with those speakers who have given expression to that difficulty, and I can quite understand that, in spite of their best efforts, they have not been able so to divide their submissions as to confine them entirely within the limits of those sub-heads that we felt could be discussed without raising the communal question. One also feels the difficulty with regard to time, which is a very great consideration indeed; and one does not wish in any way to obstruct the work of the Committee. On the other hand, one has one's own difficulties, and one has one's own mandate and the wishes of one's colleagues, apart from those who actually sit round this table, to consider. It has been amply demonstrated, in the two very learned speeches that have been made, that the discussion even of certain sub-heads of Head 6 is not possible without some direct or indirect reference to other questions with regard to which we are not at present able to make our submission; and if that difficulty has arisen on one side, there is a corresponding difficulty which I personally feel—and I am not speaking for anybody else—and it is this, that even for me, then, it would be difficult to make my submission on certain sub-heads of Head 6, even if I wanted to confine myself to those without trenching on other subjects with regard to which it is not possible to submit a considered opinion at the present stage.

That being the difficulty, and there also being my anxiety to make my contribution towards the discussion of these subjects, I wish to make this statement—that on the whole of the subject which is now under discussion I shall certainly claim my right to make my submission; and yet I cannot make it with any profit or use until after those questions which relate to the minorities have been one way or the other settled.

Sir Samuel Hoare : Lord Chancellor, Before we break up for luncheon, I wanted in a sentence or two to remove one or two of Sir Tej Bahadur Sapru's apprehensions. He seemed to think that we Members of the Government are under a perpetual vow of silence—that we have followed Mr. Gandhi's example so sympathetically that we are silent not one day of the week but every day of the week! I can assure him that we have undertaken no such obligation; but I do venture to say that I thought his implied criticism this morning was not altogether justified. He seemed to think that we Members of the Government ought to come down here and state categorically our position upon the many details that we are discussing. That has never been my view of the position of the British representatives upon this Committee. First of all, there are a number of these details upon which there must be latitude of opinion amongst every section of the Committee. It is quite clear from the discussions this morning that a complicated question of this kind bristles with points of detail, upon which there may be a latitude of view even amongst one or other Member of the Government. Moreover, today he seemed to think that, in the course of the next two or three days, we should come here and express our views not only upon these details, but upon the general question of reserved subjects—subjects that we are not discussing this morning, so far as I understand. Speaking for myself, I certainly accept the position that, some time or other, the Government will have to state their view upon these very important issues, such as the issues connected with Crown subjects; but I do say that, to ask us to do it in the course of the next two or three days, when the new Government has scarcely been formed, and when in this Committee we have not to-day even reached those subjects, is making upon us rather an extreme demand. What I do say to him is that, upon the earliest possible opportunity, no doubt, we shall discuss these questions; and when that time comes we shall obviously have to take a part in them and express our views. But, so far as to-day is concerned, I think, if we tried to do so, first of all, it would be out of order, and, secondly, the opportunity has not arisen.

Perhaps I may add to that, with reference to the details that we have been discussing, that my own view in a sentence or two is that a great many of the questions that we have been discussing this morning can only be settled in actual working. All these questions as to what should constitute a vote of censure; whether it should be a particular percentage of the two Chambers or not; questions, again, as to which section of the Assembly should take

part in particular kinds of debates; questions, again, as to the stability of the Ministry. I think it is very interesting that we should have discussions of this kind, but I myself am quite sure that they will really only be settled in the actual working of the constitution when the constitution is started. It is extraordinarily difficult for us, I think, to dot the i's and to cross the t's when these are really subjects much more of the practice of the constitution than they are of the theory of the constitution.

With reference to the bigger question that has been raised this morning, namely, the distinction between the representatives of the Crown subjects and the other Ministers, I venture to suggest it is much better really to deal with the facts as they are and to recognise the fact that, in the transitional period—I purposely say "in the transitional period"—there is definitely a distinction between these two classes of people; and, if there is a distinction, it is much better not to pretend that there is no distinction. The representatives of the Crown subjects will not be advising the Governor-General as will be the case with the other Ministers; they will be under the directions of the Governor-General. That seems to me to make a very definite distinction between the two, and I would suggest to members of the Committee that it is really better to keep in view these actual facts, rather than to try to gloss them over and to make it appear that there is a kind of collective responsibility when there is not, and that they are Ministers just like any other Ministers.

When I say that, I should like to safeguard myself to this extent. I cannot imagine that, in the working of the constitution, there would be an irremovable gulf between these two classes of people, and that on the one side the Ministers responsible to the Assembly would go their way, and that on the other side the officials responsible to the Viceroy would go their way. I imagine, rather, that these people, being practical men and dealing with things as they are, will work an arrangement of that kind, in the transitional period, much more by consultation between the two sides than by attempting to create a theory as to their identity which does not seem to me to really exist.

No doubt we shall discuss facts of this kind in greater detail when we come to discuss what are called the broader issues of reserved questions; but I venture to put that observation before the Committee this morning because I think we had much better face these facts and deal with them as facts rather than, as I say, try to create a theory that does not apply to the circumstances.

(The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.)

Mr. Joshi : Lord Chancellor, I wish to say a few words about the responsibility of the Ministry to the Legislature. The first point to which I wish to refer is the proposal made by Diwan Bahadur Mudaliyar—that the Ministry should be responsible to the two Houses jointly. That proposal does not find favour with me.

I feel, Lord Chancellor, that if we are going now to get a responsible government in India, that government should be responsible to the common people of India. Although we may have a Second Chamber in India, properly constituted, nevertheless the Executive Government must remain responsible only to the popular Chamber. Otherwise, it will not be a government responsible to the common people, but it will be a government responsible to some persons who are not really representatives of the people. I consider that the Upper House will not be representative of the people. As a matter of fact there are proposals that, in the Upper House, there should be 50 per cent. of the members who will represent not the people but the Princes; and there are proposals supported by Sir Maneckjee Dadabhoy that there should be a large proportion of representatives of the capitalist classes.

Sir Maneckjee Dadabhoy : I never said that.

Mr. Joshi : I consider, Lord Chancellor, that a real popular government should be made responsible only to the popular Chamber.

The next point which I wish to touch upon is the question of the majority by which the Executive Government should be turned out. Mr. Mudaliyar proposed that there should be an absolute majority which should compel the Executive Government to resign office. Sir, I quite appreciate the desire of some members to secure the stability of the Executive Government, but I feel they will not secure the stability of the Executive Government without making very large sacrifices by the devices which they have proposed. If you provide, in order to secure a stable Government, that an ordinary majority in the House should not suffice, but that you should have an absolute majority of members voting, I think you may secure stability to some extent; but you will secure the stability of an Executive Government which will not command the respect of the Legislature or the respect of the country. If a Ministry has not got a majority in the House and cannot get its legislation passed, cannot get its supplies voted, and still remains in power, I do not think it will command the respect of the members of the Legislature. It will not even get the respect of the people in the country. I have myself seen, in the present Provincial Legislatures, Ministers holding office but not having the respect of the members of the Legislature or of the country. Ministers proclaim in the Legislatures their policy. They are defeated on the principles of that policy. In order to keep up their office they bow to the decision of the Legislature. What does that mean? Does it mean that their principles were not very dear to them, that they did not approve of those principles, but that, in order to keep up their job, or, if I may say so, to keep in office, to keep up their power, they accepted a principle which only a little time before the discussion they considered to be a wrong principle? I therefore feel, Lord Chancellor, that if we try to secure the stability of the Executive by such devices, we shall not get a Ministry which commands the respect of the country and of the

Legislature. I am therefore in favour of the Ministers resigning as soon as they find that they have not the confidence of the Members who vote.

Lord Chancellor, while Diwan Bahadur Mudaliyar was speaking, I placed before him certain figures showing the position of certain parties—showing that, under certain circumstances, a group of members of the Legislature may not vote, and on account of a group of members not voting a smaller group may remain in power. It is quite possible that in India our members of the Legislature may be divided according to some principles—questions regarding tariffs may come forward. Those who are free traders will not like tariffs; those who are in favour of protection will like tariffs; but there may be some people who are indifferent to tariffs. These people may not vote on certain occasions. If, because a certain group of members does not vote, you keep up a Ministry consisting of a smaller group in the House, in my judgment you are giving your Executive Government to a smaller group, and it will cease to be a representative Government. I was not thinking, when I asked the question, that members may not vote because they are merely indifferent to voting, but that they may be indifferent as to which party should form the Government, and in that case may not vote. If you made a rule such as that the majority of members must vote in order to turn out a Ministry, you may keep a smaller group in power. I consider that is an undesirable thing.

In order to avoid what Diwan Bahadur Mudaliyar called the passing whims and fancies of the Members of the Legislature, I am quite prepared to accept some kind of provision which will prevent a vote of no-confidence being moved merely for vexatious purposes. You may make a rule that, before a vote of no-confidence is allowed to be moved, there should be a certain proportion of Members present showing themselves in favour; but even that number must be a small number. Lord Chancellor, the right of moving a vote of no-confidence is utilised, not only for turning out the Ministry, but as a preliminary measure for discussing measures of policy. You perhaps may know that in Great Britain votes of no-confidence or motions to that effect are moved, not because the opposition feels that the Government will be defeated or that there is the slightest chance of the Government being defeated on that motion, but a vote of no-confidence is moved in order that the Legislature should have an opportunity of discussing the policy of the Government.

I therefore feel that, if you make a provision that one-third of the Members of the Legislature—not even one-third of the Members present—must signify their assent to moving a vote of no-confidence, you will deprive the Legislature of a valuable right of discussing the policy of the Government. I would therefore put that number at a very small figure, in order to prevent one, two or three people only taking advantage of their right to move a vote of no-confidence for vexatious purposes. But, as soon as you find that there is an appreciable group in the House—it may be a small

group, but an appreciable group, in the House—who want to discuss the policy of the Government on an important measure, the vote of no-confidence should be allowed to be discussed.

Then, the question was raised as to the representatives of the States being allowed to take part in a vote of no-confidence on British Indian matters; and it was said that they should be allowed to take part in such a vote. I do not feel that this is the right attitude to adopt. We are anxious that there should be no difference in the Federal Government between Central British Indian matters and Federal matters. I, for one, am very anxious that all matters which will be within the purview of the Federal Government shall be Federal matters; but, if the States insist that certain subjects may be made Central so far as British India is concerned, but should not be made Federal, then I feel that the States should really have no voice, either by convention or by statute, in discussing votes of no-confidence on the administration of British Indian matters, because I feel that, by that means, the States will be able to control the policy of the Government on matters which are purely British Indian. The Ministry may refuse to carry out the policy dictated by the Legislature in a Central subject which is purely British Indian, and, if the Members of the Legislature do not want an Executive Government which will not carry out their policy, then they have no remedy if the States can take part in the vote of no-confidence and can keep the Ministry in office. Sir Tej Bahadur Sapru said that the reason is obvious, namely, that the States which take part in the Executive Government should have a voice in turning out the Executive Government. The reason is obvious to me so far as Federal matters are concerned, but it is not obvious to me why the States should help in keeping in Office a Ministry which refuses to carry out the policy, dictated by the Legislature, in Central subjects which are of purely British Indian interest. It is true that the Members of the Legislature who represent the States will have to resign along with the other Members; but, if they are elected Members, they will be responsible to their constituencies, and they will be returned again if their constituencies consider their policy to be right. If, on the other hand, they are Members who are nominated by the Princes, the Princes may nominate them again. If the next Prime Minister wants the same people as Ministers in the next Ministry, they may again be taken; but the Princes cannot claim to keep a Ministry in power which refuses to carry out the policy, dictated by the Legislature, on British Indian matters. I therefore feel that no right should be given to the States to take part in the discussion of a vote of no-confidence in a Ministry on a purely British Indian matter.

I do not wish to speak on the other points raised by Diwan Bahadur Mudaliyar in dealing with this subject.

Sir Maneckjee Dadabhoy : My Lord, I confess that I am labouring under the same difficulties as my predecessors who have spoken on the subject, on account of these various heads being so

intrinsically interlocked and interdependent one on the other, in the elucidation of many problems connected with the discussion of the subject under sub-head (vi) of Head 5. I will endeavour, therefore, only to speak on matters which are free from any such interdependence, and on which I can add something useful in the smallest possible way to this debate.

Your Lordship has permitted, in the first instance, a discussion on the subject as to the relationship of the persons appointed by the Governor-General to assist him in the administration of the reserved portfolios, as stated in sub-clauses (*a*) and (*b*). My Lord, for the purpose of this discussion I shall assume that, so far as has been previously settled, Defence and External Affairs will be reserved subjects. It is only on that hypothesis that we could base any discussion on this matter. I understand that Your Lordship probably will allow at a later stage a further discussion on the subject of Defence, as asked for by my friend, Sir Tej Bahadur Sapru; but at present it would be convenient to assume the recommendation of the Federal Structure sub-Committee—that both Defence and External Affairs are, for the time being, to be regarded as reserved subjects.

My Lord, I must congratulate Diwan Bahadur Mudaliyar on the ability and lucidity with which he has placed his case before this Committee.

Chairman : I quite join myself with you in that remark, if I may be allowed to do so.

Sir Maneckjee Dadabhoy : I always listen to Diwan Bahadur Mudaliyar with great pleasure because one can be quite certain that he will be always clear on the subject and that one will know exactly what he means. As I understand the situation, My Lord, at the discussion last year it was settled that the Army Member should be appointed by the Viceroy and not chosen by the Prime Minister of the new Federal Government. But there was a great measure of discussion and conflict of opinion on the question whether he should be selected from the elected Members of the Legislature, or whether he should be an official and in that capacity be appointed as the Army Member. If, My Lord, the decision arrived at then was that these two subjects—Defence and External Affairs—should be " Reserved " subjects and should be in the hands of the Governor-General, it is somewhat difficult to understand the position taken up by my friend, Diwan Bahadur Mudaliyar, that he should be a man elected from the Federal Legislature. In this connection, My Lord, I draw your attention to the Report of the Defence sub-Committee, paragraph 3, page 61:—

> " The sub-Committee also recognised that, in dealing with the question of Defence, it was not possible to overlook that a factor that must govern all considerations of the subject was the responsibility of the Crown through the Committee of Imperial Defence, which body was ultimately responsible for examining all these problems. It was realised that the

responsibility of the Committee of Imperial Defence was not something that was special to India, but was common to the Empire as a whole."

If this was the deliberate decision of the Defence sub-Committee, it seems to my mind somewhat impossible to reconcile the position that, in future, the Army Member should be chosen from the elected Members of the Federal Legislature. It is true that my friend, the Diwan Bahadur, has not confined the choice to the representative Chamber only, but has also gone to the extent of stating that the choice may be made from either House; but, My Lord, my difficulty is that, if the responsibility remains with the Governor-General, it seems to be a little bit unfair to ask that the selection should be made from the elected members of the Federal Legislature. If a good and proper and capable man who had some knowledge of military problems was available, I would welcome the selection of such a member from the Federal Legislature; but as long as the responsibility remains with the Governor-General, it is natural that the Governor-General should place a man of his choice in that appointment, and it would seem arbitrary to curtail that choice of appointment. I would therefore impose no restriction or limitation, but would leave the matter entirely to the discretion of the Governor-General. If he likes, he can make a selection from the elected members of either House; or if he likes, he can appoint a military man; or he can appoint an outsider who is not even a Member but who would afterwards become a Member of the Legislature. I think it would be reasonable to concede this position if Defence and External Affairs are going to be reserved subjects exclusively in the hands of the Governor-General and subject to his ultimate and final decision.

Then, My Lord, in this connection I would also like to add that it would be safer, at least for the first few years, that this task should be in the hands of a competent military man; and I lay stress on this, that it would be advantageous and in the ultimate interests of India if the Army Member for some years to come were a military man. I know fully well that, in England, the Secretary of State for War is not necessarily a military man or belonging to the military service. Likewise I am perfectly well aware that, in other countries, he is not necessarily a military man. I fully appreciate the sound argument which was advanced by Diwan Bahadur Mudaliyar that ultimately, at some stage or other, Defence will become a non-reserved subject, and therefore you should train men up so that eventually they will be able to undertake successfully those duties. I do not know whether I have understood the position rightly. I myself attach a great value to giving training and military instruction to our men, and I think there is a great deal of cogency in the argument advanced by the Diwan Bahadur.

Sir Sultan Ahmed : You will not get military instruction.

Sir Maneckjee Dadabhoy : I mean knowledge; I do not mean drilling. My Lord, I personally think that, under the Army

Member, some Members of the Indian Legislature must be appointed who would remain under the Army Member during the period of transition for the purpose of acquiring that knowledge.

Mr. Joshi : Under-Secretaries.

Sir Maneckjee Dadabhoy : As Parliamentary Under-Secretaries. I would suggest, therefore, the same scheme as suggested in the Montagu-Chelmsford Reforms as regards the appointment of Parliamentary Under-Secretaries in various Departments. At page 183, paragraph 224 of the Montagu-Chelmsford Report the subject is dealt with. As it is essential—as it is a very small paragraph and will not take much time— with your permission, My Lord, I will read it:—

> "The suggestion has been made to us that in some Provinces it might be convenient, where the press of work is heavy, to appoint some members of the Legislative Council, not necessarily elected, to positions analogous to that of a Parliamentary Under-Secretary in Great Britain, for the purpose of assisting the members of the Executive in their Departmental duties and of representing them in the Legislative Council. We feel no doubt that the elaboration of the machinery which is inevitable in future will impose greater burdens on the Members of the Government. We suggest therefore that it may be advisable and convenient to take power to make such appointments."

The power which it was recommended should be obtained was in connection with the Provinces; but I see no objection to this analogy being carried to the Government of India, and the Parliamentary Under-Secretaries being appointed for the purpose of training Indians in these difficult subjects during the transition period. If that is done, it will on the one hand solve the question and prevent any encroachment on the discretion, choice and power of the Governor-General, and on the other hand it will lead to the attainment of that knowledge and instruction which we all so earnestly desire.

Now, My Lord, it is to my mind perfectly clear that, as long as subjects remain reserved, though we may all thoroughly dislike it, some distinction is inevitable between the Army Member and the other Members of the Federal Executive. At the same time, I am distinctly of opinion that the Army Member should be allowed to associate as far as possible with the other Members of the Federal Executive, in order to be in constant touch with the other Members of the Federal Executive, so as to have opportunities of knowing and understanding the sentiments and the desires and the policy of the other Members of the Federal Executive. It would therefore be advantageous, I think, that he should take part in all the Cabinet debates. In matters which lie exclusively within the discretion of the Governor-General, however, he might express his opinion and give his views to the Executive, and he can answer questions put by the other Members of the Executive in order to

elucidate knotty problems involved in any particular question, and in order that the Executive may have the full advantage of hearing the Army Member, though they may not ultimately have a final voice in the decision which the Army Member in consultation with the Governor-General and under his directions, would finally decide to take. It would also enable the Governor-General, before making his final decision, to know the views of the other Members of the Federal Executive, and that would help the Governor-General in the final decision he would have to make in connection with that matter.

Now, if the appointment of the Army Member is made by the Governor-General, I am firmly of opinion that he should hold a seat in one of the Chambers, and he must on other matters also have a right to vote, like his colleagues on the Federal Executive. If he is in one House, he must simultaneously have a right of audience in the other House, but he would not be entitled to vote in that other Chamber. In fact, it would conduce to the success of the new Federal Government if the Army Member were allowed to be present at the time when every question is debated and to take part in the discussion of every matter.

With regard to the question whether the Members of the Cabinet should be confined to the Lower House or should be selected by the Prime Minister from both Houses, I am definitely in favour of the choice not being limited to the Lower House. If the Prime Minister thinks there are deserving and capable men in the Upper House . . . . .

Mr. Joshi : Deserving?

Sir Maneckjee Dadabhoy : Yes; if the Prime Minister thinks there are capable and deserving men in the Upper House, he should be at liberty to make his choice from the Upper House also. In fact, it would be absurd to tie the hands of the Prime Minister in a matter like this. I do not know whether I correctly understood Diwan Bahadur Mudaliyar, but I believe he also was not in favour of limiting the choice to one House only.

My Lord, I am entirely in disagreement with the proposition expounded by my friend, Mr. Joshi, that the States should have no voice, either by statute or by convention, in British Indian matters or also in the question relating to the vote of no-confidence. My Lord, we are starting this Federation, which is a new and novel one, with the idea of taking the Princes completely with us and meriting also their confidence in our work. We want them to associate with us more and more, and to come into closer and closer contact with the other Units of the Federation, so that the whole Federation may work in harmony and in peace, without friction, without jealousies and without any troubles. I cannot see any logic, or any great point, in the argument that the States should be debarred from participating in these matters. We are not going to put any pressure on the States that they must vote, or that they must abstain, or that they must discuss a matter; but if they choose to

discuss a matter and to express their opinions upon it, by all means let them have the right to do so.

Mr. Joshi : May I ask a question of Sir Maneckjee Dadabhoy? If a Ministry refuses to carry out the policy of the Legislature in a Central subject for British India, what is the remedy to the Legislature?

Sir Maneckjee Dadabhoy : You give them a holiday on that day.

Mr. Joshi : Give a holiday to whom?

Sir Maneckjee Dadabhoy : The States.

Mr. Joshi : Yes.

Sir Maneckjee Dadabhoy : I say, why force a holiday on them? If they are not interested, they will not take part in the debate.

Mr. Joshi : It is not a question of not being interested in a debate. They may be interested in keeping in a Ministry which refuses to carry out the policy of the Legislature.

Sir Maneckjee Dadabhoy : Well, I disagree with you. And, especially—are not the States generally interested either in the retention or the removal of the Federal Executive? Have they not the same interest as the other Units as to whether a particular Executive has become obnoxious and ought to be removed or not, or is dangerous to the peace of the country, or is otherwise unfit to carry on its work? Why should they not have a voice even in all such matters? I am unable to understand either the cogency of the argument, or even its logic.

Now, My Lord, the Diwan Bahadur has referred to the Foreign portfolio as well as to the portfolio relating to External Affairs, and having divided the foreign affairs into two compartments—one the position of Indians in the Dominions, and the other the position of Indians in other parts of the British Empire (by which I understood him to mean Crown Colonies)—he has argued that we should reserve some control over these matters also, though technically they may be foreign affairs. I agree with Sir Tej Bahadur Sapru that, unless we know exactly what the details of these matters are—what subjects will be regarded as foreign, it is difficult to express any definite opinion on the subject; but so far as immigration and other matters are concerned, our laws provide sufficiently and adequately for the health, employment and the safety of the immigrants.

As regards the statement that we are now having Trade Commissioners appointed in various parts of Europe, and that external matters also should be under some control of the Executive, though it looks a very attractive proposition, I am afraid it might land us in difficulties. I do not know what the sphere of External Affairs is going to be, and it is therefore not possible for me to express any definite and explicit opinion on the subject.

Then, My Lord, as regards sub-head (ii) of Head 5, the important question is, what is to be the numerical strength of the Federal Executive. The Diwan Bahadur has pointed out that in South Africa the numerical strength is ten as a maximum, and he has shown his predilection in favour of the Australian model, where initially a fixed number is provided for, but power is given, under Sections 64 and 65 of the Act, to the Federal Legislature to increase the numerical strength. Finally, the Diwan Bahadur has urged that the maximum of ten would be a reasonable figure, including the "Reserved" subjects. He has divided the subjects under different groups which we have all heard. My apprehension is that the policy of incurring heavy expenditure of a recurring nature is unnecessary for India.

Chairman: Would you mind just repeating that? I did not quite catch it.

Sir Maneckjee Dadabhoy: My submission, My Lord, is that the expenditure in connection with the maintenance and establishment of the Federal Executive should not be allowed to overstep the limits of ordinary prudence and economy. The Montagu-Chelmsford scheme made the administration, not only in the Provinces, but in the Government of India, top-heavy. It involved excessive expenditure. The work that the Governors in the Provinces, with two members of the Executive, were formerly doing, was done afterwards in some Provinces by five members of the Executive Council, who were provided besides with two or three other Ministers. I feel that the financial situation in the near future is going to be somewhat critical; and as the revenues of India will not yield large sums of money or permit of a policy of extravagance, as has been done in the past by the Provincial Governments or Government of India, it will be necessary to limit our expenditure to a great extent. It will therefore be prudent in the first instance to make the Federal Executive not a very large body, but a body such as is actually required for the carrying on of the work. I do not see why the present number of the Government should not be adhered to. My friend, the Diwan Bahadur, has said that, owing to a combination of portfolios being under the supervision and control of one individual, difficulties have arisen and Provincial Governments have become extravagant. The Diwan Bahadur also cited a concrete instance, stating that the Finance Department or the Financial Member of the Government of India, being in charge also of tariffs and customs, whenever he fell short of money, had a great inducement and temptation to raise Customs duties; and from his experience he argued that such a policy was an obnoxious one. I quite realise that there is a great deal of force in what the Diwan Bahadur has said; but if that argument were logically carried to its furthest extreme, what would be the result? Where a man can take charge of and have under his control half a dozen subjects, the same argument will hold good, and you will have to create for each subject a special portfolio. Therefore, My Lord, the portfolios which he described are, in my

opinion, somewhat superfluous and unnecessary. I would now give Customs and other things to the Finance Department. Railways and Public Works can easily and should, in my opinion, be left to the person who holds the portfolio of Trade and Commerce. The Minister of the Interior can safely hold the portfolio of Justice. I therefore think it is not necessary to have so many Ministers but that we should limit the choice.

Now, My Lord, for the integrity of our service, for the maintenance of the dignity of the new Executive, I think they should all be placed on a footing of equality as regards their salaries. I am not in favour of reducing the salaries of some Members and placing them in a position of disparity as compared with others. I do not think it would be conducive to the interests of India. It might be misinterpreted and the position and influence of such Members drawing smaller salaries may, in the minds of ignorant people, be affected by their salaries being lower. It may be thought that they do not occupy as high a position as others in the Executive. I do not know what salaries we are going to fix for the new Federation; but, whatever salaries you are going to fix, I am certainly of opinion that all the Members of the Executive should be placed on a footing of equality.

Now, My Lord, with regard to question (v) of Head 5, which deals with the question of the responsibility of Ministers to the Legislature, the Ministers must necessarily be responsible to the new Federal Legislature. The question has been raised whether their responsibility should be joint and collective. I may at once say that I am in favour of collective responsibility. We have seen from our experience of the working of the dyarchical system in the various Provinces, that where joint responsibility was not given there have been failures and friction. No Ministry has survived for long, and the administrative machinery on the whole has suffered. In the new Federation, at least so far as all the Members of the Executive, with the exception of the Members for the reserved subjects, are concerned—who in my opinion cannot be brought within the sphere of collective responsibility—there should be wholly collective responsibility; and all the other Members of the Federal Executive should be held responsible for the acts of omission and commission and other actions of individual Members. Unless there is that collective responsibility there will never be sufficient incentive to work together, to harmonise their thoughts, to harmonise their differences and to come to a definite agreement on all important matters.

With regard to the Army Member and to the person who will hold the portfolio for External Affairs, they will be under the direct control of the Governor-General; and I cannot see how we can extend the principle of collective responsibility to those Members. They would be entirely under the orders and control of the Governor-General, whose decisions they would be bound to carry out. It is, therefore, not possible to impose on them

this collective responsibility, which ordinarily is essential for the unification of the policy of the Federal Executive.

The question has been raised as to how the Federal Legislature is to enforce responsibility, and I understand there have been some differences of opinion on this matter. The ordinary method is by a vote of no-confidence. The Diwan Bahadur, who inaugurated this debate, has in this connection recommended that a vote of no-confidence, if it is moved, should have the support in the first instance of a certain number of members, and that members of both Houses should sit together and should decide the question by an absolute majority. There is the other view that, under ordinary circumstances, a bare majority would be sufficient. If the recommendation of the Diwan Bahadur—that both Houses should meet and dispose of the question—be adopted, then, in my opinion, there is not much danger of the real issue being lost sight of by the combined Legislature; and in my view it is highly unlikely that they will arrive at a wrong decision. In that case, I think, a bare majority, or a sufficient majority, would be quite ample. I do not see, My Lord, any special reason why, when the two Houses of the new Federal Legislature meet together, and, consisting of men, as they will be, of ability, learning, knowledge and experience (and I come now to the question put to me by my friend Mr. Joshi), they cannot be trusted completely in this matter. They are not all likely to go wrong. If they are likely to go wrong—if they are not men of sufficient standing and ability to decide such a question—then I say that we do not deserve a Federation at all. If we cannot trust the members of these two Houses, then I ask, why trust the administration of the country to them? I am therefore strongly of opinion that a bare majority will be adequate.

My Lord, I will not trouble the Committee any further. There are many other matters on which I would like to speak, but I am afraid they are so much interconnected with the other questions that I should be trespassing upon the injunction laid down by Your Lordship if I were to do so. At the same time I reserve my right to speak at a later date when these other points are discussed.

H.H. The Nawab of Bhopal: Lord Chancellor, I wish briefly to indicate our views on the questions raised by you. The first question deals with the appointment of the Federal Ministers. As the basis of Executive power is vested in the Crown, as represented by the Governor-General, we think that the procedure suggested in paragraph 9 of the Second Report of the Federal Structure sub-Committee, as it follows the constitutional precedent in the Dominions under the Crown, may be adhered to. The appointment of these Ministers should, in our opinion, be made by the Governor-General in consultation with the Prime Minister.

With regard to question (ii), that is, the number of Federal Ministers, we think that no specific limitation need be laid down. The Federal Ministers should be as few or as many as circumstances

demand, and the authority to determine and modify the number of Ministers should be with the Governor-General acting in consultation with the Prime Minister.

In regard to the question of the representation of Indian States in the Federal Executive, whatever my own views may be, the majority of the Indian States Delegation feel that the representation of the States in the Federal Executive should be secured by a constitutional convention. It is felt that it should not be left solely to the discretion of the authority appointing the Ministers, or to the Parliamentary strength of the group representing the States. We, however, agree that no statutory provision is necessary in this connection, for all that my colleagues ask is that the convention should be firmly established and that every Ministry should contain representatives from the States. The question raised in sub-head (iv), therefore, does not arise.

In regard to the question of the responsibility of Ministers raised in sub-head (v), we agree in general with the view expressed by the British Indian Delegates. The Ministers will be responsible to the Legislature in the sense that (1) they will be accountable for their actions; (2) they will continue in office as long as they enjoy the confidence of the Legislature; and (3) the Legislature may have authority to dismiss a Ministry, not enjoying its confidence, by a direct vote of censure. The responsibility of the Ministry should be collective. This is the essence of Cabinet Government. Whether collective responsibility should be recognised and expressed in the constitution, is a different question. If, as we have postulated, there is to be a Prime Minister, and his colleagues are selected by the Governor-General in consultation with him, then, I believe, the collective responsibility of the Cabinet follows automatically, and, in my opinion, need not be expressed specifically in the constitution. I should like, however, to make it clear that, by accepting the principle of collective responsibility, the representatives of the States who may be on the Federal Executive do not desire, as far as they are concerned, to be placed in the position of having to participate in the decision of purely British Indian Central subjects, if there be any such subjects.

With regard to sub-head (vi) also, we hold that the Ministers in charge of the Crown subjects should have the right to attend Cabinet meetings. They should be members of one or other of the two Houses, with the right to speak in both but voting only in the House of which they are members.

The question as to when a Ministry can be said to retain or to have lost the confidence of the Legislature, justifying its continuance in office or resignation, should be left to constitutional usage and practice. If a Cabinet cannot enact legislative measures which it considers important, or cannot get supplies voted, it will, I suppose, have to resign. It is for the Ministry itself to judge whether it can carry on the King's Government. Personally, I

hold that no special provision is necessary. Whether a Ministry would be justified in retaining office if, on any given matter, they were accorded the support of one Chamber but denied that of the other, is a different question. It depends almost entirely on what the matter is. If a Bill, which a Ministry considers vital, is thrown out by one House and does not secure the necessary majority in a Joint Session, and if the Ministry considers it an essential part of its programme, it will no doubt resign. We agree with Diwan Bahadur Mudaliyar that the decision should be by an absolute majority of the two Houses, but we do not wish to press the point and would accept the agreed views of British India in this matter. We have accepted the co-ordinate character of the two Chambers, and therefore, generally speaking, a Ministry would have to secure support from both Houses; but support or opposition of a particular measure, unless it is declared to be a question of confidence, does not necessarily show that the House in which the opposition to that measure is powerful has lost confidence in the Ministry. So far as the participation of the States in the discussion of Central affairs is concerned, the Indian States Delegation has stated its views clearly and definitely—they do not wish to participate in it.

In regard to this subject, I crave your indulgence for a few minutes to express my views in some detail. Though, My Lord, they are only my personal views, I feel that I shall have the support of some, and perhaps of a large number, of my colleagues on this subject. My colleagues on the other side are well aware that I myself, and most of my colleagues on the Indian States Delegation, for reasons well known, have not been so far in favour of the creation of an Indian States bloc. By the same process of reasoning, we are opposed to a confederation of British Indian Provinces. As long as there are Central subjects we fear there will be one solid bloc of British India always dominating the Federal Legislature; and the ideal which you, Lord Chancellor, so eloquently put forward, of having no two Indias in the future, will become unreal from the very beginning. I am therefore convinced that it will be detrimental to the best interests, both of the Federation as a whole and of the Indian States, to have two lists of subjects of common concern, one Federal and the other Central. In the first place, My Lord, it will be unfair to British India that we of the States, whilst claiming immunity from interference in our internal domestic affairs, should in any shape or form have any voice in the internal affairs of purely British Indian Provinces, whether in regard to legislation or policy, or the passing of a vote of no-confidence in connection with any of the subjects proposed to be Centralised, resulting in the resignation of the Cabinet. We do not ask for it. Secondly, My Lord, I am personally of the view that, if the list of Central subjects is retained, it will only be natural if it acts as an incentive to the Federal Government to extend its sphere of jurisdiction and desire to exercise similar authority in respect of Indian States. We do not want this either.

The process of levelling down in the case of the States may irresistibly follow. We have all along made it clear that we do not wish to be levelled down to the status of British Indian Provinces as they are to-day. We shall, of course, welcome the levelling up of the Provinces; but I am afraid it will not be possible for us to agree to the levelling down of the States. This has been one of the fundamental conditions which you, My Lord, know the States have all along laid down. If there is to be federation, the whole problem will have to be considered with the sole object of creating completely autonomous and internally independent Provinces for the purposes of federation. This, I am convinced, would make our Federation real, stable and more easy to work. If, however, My Lord, this could not be done at once, I should like to make our position clear. We are neither anxious nor desirous to have anything to do with the affairs concerning British India alone. We realise the difficulty regarding the vote of no-confidence resulting in the resignation of the Federal Executive, and I do hope that some solution of this problem will be found, which will avoid the necessity of our having to interfere in any matters whatsoever with what may be purely British Indian affairs. As long as this is not done, I think we shall probably take a holiday on these occasions.

Mr. Joshi: I should like to know from His Highness what is exactly the meaning of the words " constitutional convention."

H.H. The Nawab of Bhopal: As it develops and grows, the convention may grow that our representatives should be on the Executive. That was the idea.

Mr. Joshi: Not statutory?

H.H. The Nawab of Bhopal: Not statutory. I made that clear.

Mr. Joshi: There may be a majority in the Legislature holding, for example, free trade views. Will the representatives of the States, if they are nominated officers, be allowed to have political views, such as free trade views or protectionist views; and if they are not allowed to hold political views on matters of policy, how can they enter a Ministry and that Ministry become a homogeneous one? I see some difficulty in representatives of the States being Members of the Executive when the Executive is to consist of people holding definite views on politics.

H. H. The Nawab of Bhopal: Our view is that we do not think any Government would like to leave the States out and not have them represented on the Executive. Moreover, the representatives of the States, if they are appointed to the Executive, will have no connection whatsoever with the States themselves. They will have their policy according to their own views, and have nothing to do with the policy of a State or a group of States.

(The Committee adjourned at 4 p.m.)

THE FOLLOWING NOTE WAS HANDED IN BY RAO BAHADUR KRISHNAMA CHARI.

I have been asked to state the views of the Indian States Delegation on the questions coming under Head 6.

Q. (1) As you have pointed out in your Note, under the present Government of India Act, both the Central and Provincial Legislatures can legislate as to all matters and subjects, the only difference being that provincial legislation does not extend beyond the Province. We think that generally such a system is incompatible with and should not continue under the Federal Constitution we are contemplating. As the future Federal Government will have authority only in such matters concerning the States as are expressly delegated to it by them, its legislative competence would be limited by the scope of that delegation. It is only by a close adherence to this principle that we can ensure the smooth working of the constitution and the maintenance of the sovereignty of the States in the spheres in which sovereignty has not been delegated by them. It is, therefore, necessary that the legislative powers of the Federal, and State and Provincial Legislatures should be clearly defined in the constitution.

Q. (3) The States accept the principle laid down in the First Report of the Federal Structure sub-Committee that the enactments of the Federal Legislature, acting within its legal scope, should have full force and effect throughout all Units in the Federation, and agree that consequently Acts of the Federal Legislature relating to Federal subjects shall apply *proprio vigore* to the territory of the States which are members of the Federation.

Q. (4) In the case of Federal subjects the administration of which is reserved by the States or vested in them, we are of opinion that the States should have the power of concurrent legislation. This would be a very useful provision from the point of view of enacting rules and orders, and, may be, regulations in the nature of additions consistent with the Federal Statutes, so as to make the local administration of the subjects conformable to local conditions. Such powers of concurrent legislation are found in Federal Constitutions, and we are particularly thinking of such powers as are provided in Articles 6, 7, 12 and 13 of the German Constitution. The States are anxious to retain such a power; and as any concurrent or subsidiary legislation will only be valid so far as it is consistent with Federal law, it is desirable that such power should be reserved to them.

Q. (5) We have answered the question of concurrent legislation from the States' point of view. The States will retain their full sovereign rights to legislate exclusively for their subjects and territories as regards all matters except those in regard to which they have delegated powers to the Federal Government; and they will retain powers of concurrent or subsidiary legislation with regard to Federal subjects the administration of which is in their

hands. It should be provided that Federal law should over-ride State law and State law should be void to the extent of its repugnancy to Federal Statutes.

Q. (6) The strict delimitation of powers is an essential feature of a true Federation, and so far as the States are concerned they are of opinion that the question of *ultra vires* should be left exclusively to the Federal Court.

PROCEEDINGS OF THE FORTY-FOURTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE, HELD ON THE 2ND NOVEMBER, 1931, AT 11-0 A.M.

Discussion on the Draft Third Report.

Chairman: Your Highnesses and Gentlemen, the draft Report of this Committee on the Legislature and on Federal Finance was circulated on Saturday, in accordance with the undertaking that was given to you last week. I had hoped to circulate at the same time a draft Report on the Federal Court, but we were not quite able to get it ready.

I need not remind you, because I am sure it is very present to your minds, that the greater the measure of agreement here the more likely it is that the Bill before Parliament will have a smooth and unanimous passage. I cannot say anything more about that; but it is obvious that, if the suggestions come with the almost unanimous support of this Committee and of the Conference, they must carry great weight with all political parties both in India and in England.

I do not propose to conclude my remarks without breaking a tradition. I am rather fond, personally, of breaking traditions. It is a rule that the Civil Service in England does its work anonymously. They are most invaluable guides, and we are only too thankful to have the benefit of their experience. If I may be allowed to say so, rather in lighter vein, I think you will find, when you get your own Civil Service, that nineteen times out of twenty the Civil Service is right. On the twentieth time, you had better get your own way whether you are right or not.

I wish to place on record here the names of the gentlemen who have enabled us to produce this Report; and not only this Report, but the various Heads of discussion and the various memoranda which have been circulated from time to time during our meetings. In the early part of this year these gentlemen formed a small committee, and they have been working early and late—I think I might certainly say every week and I might also say every day—upon Indian affairs. Really, their knowledge is encyclopaedic. I want to have the names of these gentlemen placed upon the record in order that, in future, the proper thanks of the people who come after us may be given in the right quarter. The gentlemen whose names I desire to mention, and who have been of the

most invaluable assistance, and without whose help and advice certainly I could not have presided, are as follows:—

Sir Claude Schuster,
Sir Maurice Gwyer,
Sir Findlater Stewart,
Sir Edward Chamier,
Mr. King,
Mr. Carter,
Mr. Dawson,
Mr. Patrick.

I make bold to say that, when the future history of India is written, the thanks of the people who will benefit by it will be far more due to these gentlemen than they are to any of us sitting round this table.

I now propose to read through the Report and then to come back to each paragraph.

(The Chairman then read paragraphs 1—51 *of the draft Third Report.)**

Introductory.—The Committee's task at the Second Session of the Conference was to continue their discussions at the point at which they were left by their Report of 13th January, 1931, and by the Prime Minister's Declaration of 19th January, and to endeavour, so far as possible, to fill in the outlines of the Federal Constitution for Greater India which was sketched in those documents.

2. In approaching this task the Committee have been assisted by colleagues who did not share in their earlier deliberations. In this connexion it will be remembered that in virtue of an agreement recorded in March last the Indian National Congress decided to participate in their labours.

3. Since January last there has been much public discussion of the constitutional proposals which emerged from the last Session of the Conference. The Committee resumed their deliberations with the knowledge of this public discussion, and with the conviction that it is in a Federation of Provinces and States that the solution of the problem of India's constitutional future is to be found.

4. A further examination of the problem has confirmed them in the belief that by no other line of development can the ideal in view be fully realised. For this purpose it is essential that the "India" of the future should include along with British India that "Indian India" which, if Burma is excluded, embraces nearly half of the area and nearly one-fourth of the population of the country—an area and population, moreover, which are not self-contained and apart geographically or racially, but are part and

* These paragraphs, as amended in consequence of the ensuing discussion, are printed as paragraphs 1—51 of the Third Report of the Federal Structure Committee, *see* pp. 931—943.

parcel of the country's fabric; and its constitution must be drawn on lines which will provide a satisfactory solution for the problem of the existence side by side of future self-governing Provinces and of States with widely varying politics and different degrees of internal sovereignty whose fortunes are, and must continue to be, closely interwoven.

5. The Committee rejoice to think that the Princes, while rightly determined to maintain their internal sovereignty, are prepared, and indeed anxious, to share with the British Indian Provinces in directing the common affairs of India.

6. It will be easy for the constitutional purist, citing Federal systems in widely different countries, to point out alleged anomalies in the plans which the Committee have to propose to this great end; but the Committee, as they stated in their First Report, are not dismayed by this reflexion. Their proposals are the outcome of an anxious attempt to understand, to give full weight to, and to reconcile, different interests.

7. The Committee have taken into account

(*a*) the widespread desire in India for constitutional advance;

(*b*) the natural desire of the Indian States to conserve their integrity;

(*c*) the indisputable claims of minorities to fair treatment;

(*d*) the obligations and responsibilities of His Majesty's Government; and

(*e*) the necessity, paramount at all times, but above all at a transitional period like the present, when the economic foundations of the modern world seem weakened, of ensuring the financial credit and the stability of Government itself.

8. Without a spirit of compromise such diverging interests cannot be reconciled; but compromise inevitably produces solutions which to some, if not to all, of the parties, may involve the sacrifice of principle.

9. It follows that in many cases, many members of the Committee would have preferred some solution other than that which appears as their joint recommendation. But recognising that the basic aim of this Conference is, by the pooling of ideas and by the willingness to forego individual desires for the common good, to attain the greatest measure of agreement; above all recognising that the time has come for definite conclusions, the Committee are prepared to endorse the conclusions set out in this Report.

10. *The structure, size and composition of the Federal Legislature.*—The Committee expressed the view in their previous Reports that the legislative organ of the Indian Federation should consist of two Chambers, which will be empowered to deal with the whole range of the activities of the Federation, both those which affect

British India only, and those which affect all federal territory. In the course of their discussions preferences were expressed in some quarters for a unicameral Legislature, on considerations alike of simplicity, efficiency and economy; while some members urged that, having regard to the nature of the matters to be dealt with by the Federation, a single small Federal Chamber, which would adequately reflect the views of the Governments of the constituent Units, would be the right solution of the problem.

11. At a later stage again the Committee was placed in possession of proposals which they have not been able fully to discuss, but which clearly demand further consideration, though the Committee fully realise that the adoption of either of these plans would involve material modification of the framework hitherto contemplated.

12. One of these plans would substitute for the Upper Chamber a small body consisting of nominated delegates of the governments of the federating Units, which would have the right of initiating legislation and would be empowered to exercise a suspensory veto over the measures passed by the elected Chamber. This body would also have the right to express its opinion upon all measures of the Federal Government before they were laid before the elected Chamber. The authors of this plan also contemplate the possession by this body of certain advisory functions in the administrative sphere.

13. The second of these plans contemplates the confederation of the States into a single collective body for the purpose of federating with the British Indian Provinces. Its supporters would prefer a single Federal Chamber in which the representation of the Indian States collectively should be 50 per cent., the representatives being selected by an electoral college consisting of the federated States as a whole. In the event of a decision in favour of a bicameral Legislature, 50 per cent. of the seats in the Upper Chamber would be reserved for the States, their representation in the Lower Chamber being on population basis.

14. Upon the assumption, however, that the Legislature is to be bicameral, a variety of factors must be taken into account in determining the size of the Chambers. Cogent theoretical arguments can be adduced (and were in fact advanced by some Delegates), in support of the view that for a country of the size and population of India, a Legislature consisting of from 600 to 700 members of the Lower Chamber and from 400 to 500 for the Upper, could not be regarded as excessive in size, and that smaller numbers would fail to give adequate representation to the many interests which might reasonably claim a place in it. On the other hand arguments no less forcible were adduced in favour of the view that Chambers exceeding 100 to 250 respectively might prove ineffective organs of business. We have given these divergent views the best consideration of which we are capable, and recommend as the result that the Chambers should consist, as near as may be, of 200 and 300 members respectively, in which the allotment of seats

to the States should be in the proportion of 40 per cent., (or approximately 80 seats) in the Upper Chamber, and 33⅓ per cent. (or approximately 100 seats) in the Lower.

15. This latter recommendation is, of course, based on the assumption that the whole body of the States will eventually adhere to the Federation. The view was strongly expressed that in the case of States not adhering at the outset seats allotted to them as the result of the procedure contemplated in paragraph 26 should remain unfilled pending their adherence. But it was also urged that this might lead to a situation under which States adhering at the outset could find their total voting strength in the Legislature so small as to be inconsistent with their position as representing one of the main constituent elements of the Federation. Thus in the event of the original adherents not forming a substantial proportion, that is to say, at least one-half, of "Indian India" it will probably be desirable to devise some method of weightage by which their voting strength would be temporarily augmented pending the accession of other States.

16. In any event difficulty might arise in regard to States which are grouped for purposes of deputing a representative, but it would be premature to attempt to suggest the best solution for such problems until the measure of adherence by "grouped" States can be fairly accurately ascertained or foreseen. The Committee accordingly content themselves with expressing the hope that the measure of adherence in each group will be sufficiently great to justify the filling of the seat allotted thereto by the nominations of the adhering States. Should the system of grouping be such as to admit of the allotment of two or more seats to one group, difficulties of this order would be more easy of solution.

17. The Committee recommend that the 200 members of the Upper House should be chosen in the main to represent the component Units—the Provinces of British India and the States—and that the representatives of the British Indian Provinces should be elected by the Provincial Legislatures by the single transferable vote. Candidature for the Federal Legislature should not, of course, be restricted to members of a Provincial Legislature, though such persons should be eligible if otherwise qualified.

18. In the case of those States which secure individual representation, their representatives will be nominated by the Governments of the States. In the case of those States, however (and there will necessarily be many such) to which separate individual representation cannot be accorded, the privilege of nomination will have to be shared in some manner which it will be easier to determine when the various groups have been constituted—a process which will of course, entail a detailed survey of local and regional circumstances.

19. For the Lower Chamber the Committee consider that the selection of the British Indian representatives should be by election otherwise than through the agency either of the Provincial Legis-

lature or of any existing local self-government bodies. Most members consider that election should be by territorial constituencies consisting of qualified voters who will cast their votes directly for the candidate of their choice. Others have advocated some method whereby some of the obvious difficulties which must confront a candidate in canvassing and maintaining contact with so large an area as the average constituency will involve, may be obviated.

20. The actual framing of the constituencies must necessarily depend largely upon the detailed arrangements to be made for the revision of the existing franchise—a task which is to be undertaken by a special Franchise Committee. The Committee therefore recommend that this body should be charged also with the duty of making proposals for the constituencies to return the British Indian members of the Lower Chamber of the Federal Legislature, and that it should explore fully the alternatives of direct and indirect election indicated in the preceding paragraph in the light of the practical conditions which will be presented by the size of constituencies, their populations and the proportion of this population to be enfranchised. The area and population of British India excluding Burma being in round figures 800,000 square miles and 255 millions respectively, and the seats in the Lower Chamber available for representatives of that area on the Committee's proposals being approximately 200, it follows that the average area of a constituency would be approximately 4,000 square miles, and the average population per seat some $1\frac{1}{4}$ millions. And while in many cases the former of these figures would obviously be reduced by the natural grouping of the population in urban areas, the difficulties presented by electoral areas and populations of this size would, of course, be accentuated by the existence of separate communal electorates. It may well be that while no difficulty will be experienced in providing for direct election in urban areas, some method of indirect election as recommended by the Franchise sub-Committee of the Conference may prove desirable for rural areas.

21. As regards the apportionment of the British Indian seats in both Chambers to the Provinces *inter se*, the Committee recognise that the population ratio, which they were disposed to recommend in their previous Report as the guiding principle, would not produce a satisfactory result unless it were tempered by other considerations. To take only one instance, it would immediately reduce the Bombay Presidency, a Province of great historical and commercial importance, which has for many years enjoyed approximately equal representation in the Central Legislature with the other two Presidencies and the United Provinces, to less than half the representation these latter will secure.

22. For the Upper Chamber, which will represent in the main the Units as such, the Committee think that the guiding principle should be a reasonable approximation to equality of representation for each unit. Absolute equality, having regard to the great varia-

tions in size and population between the Provinces, would obviously be inequitable. The problem is a difficult and complicated one, involving the careful assessment of local factors, which is beyond the competence of this Committee. But the suggestion has been made that a possible solution might, for example, be to assign to each of the Provinces which exceed 20 millions in population, namely, Bengal, Madras, Bombay, the United Provinces, the Punjab and Bihar and Orissa, an equal number of seats, say, 17; to the Central Provinces (if it included Berar) and Assam, say, 7 and 5 seats respectively; to the North-West Frontier Province, 2 seats, and to Delhi, Ajmer, Coorg and British Baluchistan, 1 seat each.

23. In the Lower Chamber, representing as it will primarily the population of the federated area, we consider that the distribution should tally as closely as possible with the population ratio, but that some adjustment will be required in recognition of the commercial importance of the Bombay Presidency and of the general importance in the body politic of the Punjab, which it will be generally conceded is not strictly commensurate with its population as compared with that of other Provinces. We suggest that this adjustment might be secured in the case of Bombay to some extent, at all events, by adequate weightage of the special representation which we have recommended for Indian and European commerce, and, in the case of the Punjab, by some arbitrary addition to the 18 seats which it would secure on the basis of its population. Here again the Committee are not in a position to make a definite recommendation, but they take note of a suggestion which has been made for the allotment to the Punjab and Bombay, and also to Bihar and Orissa of 26 seats each; to Madras, Bengal and the United Provinces, of 32 seats each; to the Central Provinces, of 12; to Assam, of 7; to the North-West Frontier Province of 3; and to the four minor Provinces of 1 each, by this measure securing a distribution of the 200 seats which might be held to satisfy reasonable claims without doing undue violence to the population basis.

24. *Apportionment between the States of their quota.*—The Committee recognise that this is primarily a matter for settlement among the Princes themselves, but the representatives of other interests can hardly regard it as a matter of indifference since, until a satisfactory solution is found, the idea of federation necessarily remains inchoate and an important factor in determining the decision of individual States as to adherence to the Federation will be lacking. In view of the admitted difficulties of the question the Committee are anxious to assist by friendly suggestions towards the consummation of an acceptable and generally accepted conclusion. The Committee are fully aware that the effective establishment of federation postulates the adherence of the major States and that the absence of even a few of the most important States, however many of the smallest might be included, would place the Federation under grave disadvantages. At the same time they think that it is essential

that the States as a whole should secure representation which will commend itself to public opinion as generally reasonable and that it is hardly less important to satisfy, so far as may prove possible, the claims of the small States than to provide adequate representation for those which cover large areas.

25. Two suggestions have been advanced in the course of the Committee's discussions for the solution of this problem—the first that the matter should be entrusted to the Chamber of Princes, with such arrangements as would secure an adequate voice in its deliberations to the small States, and that, if the Chamber failed to secure agreement, the Viceroy should be asked to settle the matter; the second, based on the belief that the inherent difficulties of the problem would prove such that the Princes—acting through whatever agency—would be unable to evolve a plan which would meet with general acceptance and satisfy all claims, and consequently that a procedure based upon the first suggestion would merely involve infructuous delay, was that the task of apportionment should be remitted to an impartial Committee or tribunal on which the States themselves should not be given any representation, but before which they would be all invited to urge their claims.

26. The Committee are not in a position, for reasons already stated, to make any definite recommendation as to the acceptance of either of these suggestions, but they consider that the best course would be to allow a period of time, which should not, they think, extend beyond the end of March, 1932, within which the Princes should be invited to arrive at a settlement on the understanding that, if within that period a settlement were not in fact secured, an impartial tribunal would be set up by His Majesty's Government to advise as to the determination of the matter.

27. *Method of selection of States' representatives in the Lower Chamber.*—While the Committee remain of opinion that this question must be left to the decision of the States, it cannot be contended that it is one of no concern to the Federation as a whole. They note the assurances of certain individual members of the States Delegation that in those States which possess representative institutions, and for which these members were in a position to speak, arrangements will be made which will give these bodies a voice in the Ruler's selection. The Committee as a whole are prepared to leave this matter to the judgment of the States.

28. *Representation of special interests in the Federal Legislature.*—In paragraph 34 of their Second Report the Committee recommended that special provision should be made in the Federal Legislature for the representation of the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce and Labour. We make no recommendation here relating to the first four of these interests, since the decision on this point is one for the Minorities Committee.

29. But we affirm our previous recommendation that provision should be made for the special representation of the Landlord

interest, of Commerce (European and Indian) and of Labour. The number of seats to be assigned to each of these four interests and their apportionment amongst the various Provinces are questions which should be considered by the Franchise Committee, as also is the question of their method of election. Wherever possible the method should be election rather than nomination.

30. *Nominated members.*—In paragraph 34 of the Committee's Second Report the suggestion was also made that the Governor-General should be empowered to nominate to each Chamber a specified number of persons, not exceeding perhaps ten, to represent the Crown. After further consideration, the Committee see no advantage to be gained from pursuing this suggestion. The persons appointed by the Governor-General to assist him in the administration of the Reserved portfolios will, of course, play their part in the business of the Legislature, but it is not apparent how their task would be facilitated by the presence of a small body of nominated members who, if they were non-officials, would rarely possess any special or effective knowledge of questions connected with the administration of the reserved Departments, and whose votes would be too few to influence decisions.

31. If, on the other hand, these members were officials chosen for their knowledge of the subjects in the Governor-General's charge the same difficulty would be experienced as under the present régime of sparing from their departmental duties for attendance in the Legislature so considerable a number of officials as the suggestion contemplates; moreover, the voting power which such officials would exercise would either be negligible or else would tend to maintain an " official bloc " which, in the opinion of the majority of the Committee, would be out of place in the conditions of the new constitution.

32. On the other hand, while the Committee for the reasons given are not prepared to advocate the nomination of members in either Chamber to represent the Crown or Crown interests, they are impressed with the desirability of securing to the Federation the services in the Upper Chamber of men of the elder statesmen type with an experience of public affairs, both in the political sphere and outside it. It may well be that men of this type whom India would delight to honour may be unwilling through the absence of provincial influence or connexions, to solicit the suffrages of Provincial Legislatures, or to promote their candidatures by identifying themselves with particular political parties; and the small chances of success at the polls, when party feeling runs high, likely to be attained by men possessing in the English phrase the cross-bench mind need not be emphasised. Yet it would be a grave loss to India if such men were excluded from her counsels. The Committee are therefore of opinion that a small proportion of seats should be reserved in the Upper Chamber only, for persons to be appointed by the Governor-General. The Governor-General would, in making these appointments, act as a general rule upon the

advice of his Ministers, though we are disposed to think that, possibly by a constitutional convention, possibly by provision in the Constitution Act, two or three of the appointments might be made on the Governor-General's personal responsibility. In order to avoid any suggestion, however, of an official bloc, the Committee are of opinion that no serving official should be qualified to sit in the Upper Chamber as a nominated member.

33. *Qualifications and disqualifications for membership.*—For the Lower Chamber in British India the qualification for membership should be identical with that for a voter, that is to say, any person who is qualified as an elector for a constituency of a particular class should be qualified also to stand for election by any constituency of that class in the Province.

34. But for candidates for the Senate certain additional qualifications should be laid down. Without attempting to prescribe these in detail—a task which would better be undertaken by the Franchise Committee—we consider that the existing rules regulating the qualifications of voters (and consequently of candidates) for the Council of State should be adopted as a model for candidates for the Upper Chamber, except that the minimum age limit should be 35 years.

35. It will be necessary also to prescribe the qualifications of voters in the special constituencies we have recommended to secure the representation in the Upper Chamber of Landlords, Commerce (European and Indian) and Labour: and—subject to the age limit just suggested— a person qualified as a voter in any of the special constituencies should be qualified also as a candidate. Whether, in the case of all or any of these special constituencies, the present qualifications for voters for the Council of State could be adopted as they stand appears doubtful: but this we would leave for the consideration of the Franchise Committee.

36. The existing disqualifications for membership for the Indian Legislature appear to us generally suitable for retention, though there was some difference of opinion as to those arising out of convictions for criminal offences, and suggestions were made—which we regard as impracticable—that a distinction should be drawn for this purpose between "political" and other offences, or between offences involving moral turpitude and those which do not. On the whole we regard a restriction of this nature on the free choice of the elector as of little value as a means of ensuring probity of character in candidates, and we recommend that they should be abandoned. At the same time we consider that the rules should be so framed as to disqualify from candidature any person who at the time of an election is actually undergoing a sentence of detention and who would consequently be unable, if returned, to fulfil his duties to the Legislature and to his constituents.

37. Although it will clearly be impossible to secure uniformity of qualification in British India and the States we think it of great importance that there should be absolute uniformity in the

matter of disqualifications. These should therefore be embodied in the constitution and should apply to all candidates alike.

38. *Oath of Allegiance.*—The Committee consider that, following common practice in the Empire, the Indian Constitution should provide for an oath of allegiance to be taken by members of the Federal Legislature on assumption of their seats. They do not suggest a definite formula at this stage, but its terms will require careful consideration.

39. *Relations between the two Chambers.*—As will appear from paragraphs 26 and 35 of the Committee's Second Report, this important question was discussed for the first time in the Committee's present Session. The careful consideration we have now given to the matter has led us to the view that nothing should be done in the new constitution which would have the effect of placing either Chamber of the Federal Legislature in a position of legal subordination to the other. It would be a misconception of the aims which we have in view to regard either Chamber as a drag or impediment on the activities of the other; in our view the two Chambers will be complementary to each other, each representing somewhat different, but, we hope, not antagonistic, aspects of the Federation as a whole. Absolute equality between the two Chambers of a bicameral Legislature is no doubt unattainable and, if it were attainable, might well result in perpetual deadlock; and there is no less doubt that, the provisions of the constitution, notwithstanding the evolution of political development, will inevitably result in the course of time in placing the centre of gravity in one Chamber.

40. But so far as the letter of the constitution is concerned we consider that there would be no justification for endowing one Chamber at the outset with powers which are denied to the other. We accordingly recommend that while the constitution should provide that, subject to the special provisions to be referred to later, no Bill should become law until it is assented to by other Chamber, it should contain no provisions which would disable either Chamber from initiating, amending or rejecting any Bill, whatever its character. The principle of equality also appears to us to demand that the Government should be entitled to test the opinion of the other Chamber if one Chamber has seen fit to reject a Government Bill, and that in the event of its passage by the second Chamber it should be treated as a Bill initiated in that Chamber and taken again to the first.

41. In the event of rejection by one Chamber of a Bill which has been passed by the other, or of its acceptance by either in a form to which the other will not agree, we recommend that subject to certain conditions which should be set out in the constitution, the Governor-General should have power, either after the lapse of a specified period or, in cases of urgency, at once, to secure the adjustment of the difference of opinion by summoning a Joint Session.

42. We see no reason why the principle of equality of powers should not extend also to the voting of supply. The supply required by the Federal Government will be required for the common purposes of the Federation (or for the common purposes of British India) and there is, in our view, no logical reason which could be adduced in favour of depriving the representatives of the Federal units in the Senate of a voice in the appropriation of the revenues, the responsibility of raising which they will share equally with the members of the Lower Chamber.

43. We propose therefore that the annual estimates of the revenue and expenditure of the Federal Government (which, as we propose elsewhere, should be contained in a single Budget statement covering both Federal and Central revenue and expenditure) should be laid simultaneously before both Chambers, and that that Government's Demands for Grants should be debated and voted upon by each Chamber, the debate in the second Chamber taking place upon the Demands as amended by the first. In the event of a difference in view between the two Chambers as to the amount to be granted under any Demand, we recommend that the difference should be resolved by an immediate Joint Session of both Chambers, the decisive vote being that of a simple majority. The Demands would, of course, be so arranged as to separate expenditure required for Federal purposes from that required for Central purposes, so that the latter might stand referred to a Standing Committee of the British Indian members of both Chambers.

44. *Federal Finance.*—The Committee did not find time during the first Session of the Conference to consider the subject of "Federal Finance" which may be summarily described as the question of the apportionment of financial resources and obligations between the Federation and the Units. On taking up this subject the Committee found it desirable to remit it for examination by a sub-Committee over which Lord Peel presided.

45. The Report of this sub-Committee, which was in effect unanimous, is appended to this Report. Little criticism was directed to its main features and the Committee accept the principles contained in it as a suitable basis on which to draft this part of the constitution.

46. The Committee were, however, not satisfied with the proposals in Lord Peel's Report for a review of the problem by Expert Committees. Fear was widely expressed that these might, by recommending principles at variance with those upon which the Conference was agreed, tend to undo work already accomplished, and further, that the procedure suggested might cause unnecessary and perhaps dangerous delay in settling various points which had an important bearing on the character of the new Federation. The Committee accordingly consider that the suggested procedure should be revised in the manner described below.

47. No change need be made as regards the second of the two Committees (concerned with paragraphs 17—20 of Lord Peel's

Report), except that it should have no connection with the other Committee. It should be noted that, of the matters within the purview of this "States" Committee, it is only in respect of those dealt with in paragraph 18 of Lord Peel's Report that it is essential to reach a settlement before the Act setting up the Federation comes into operation.

48. In place of the first Committee recommended in Lord Peel's Report there should, as early as possible, be appointed in India a "fact-finding" committee consisting of officials familiar with questions of finance, including States' finance. Without elaborating terms of reference the functions of this committee may be sketched as follows:—

(*a*) To investigate the division of pension charges (paragraph 5 of Lord Peel's Report).

(*b*) To investigate classification of pre-Federation debt as contemplated at the end of paragraph 6 of Lord Peel's Report.

(*c*) To calculate the effect on the Provinces of various possible methods (of which there are only a few to be considered) of allocating the proceeds of Income-tax to the Provinces.

(*d*) To give an estimate of the probable financial position of the Federation in its early years under the scheme proposed in Lord Peel's Report indicating, *inter alia*, the probable results of federalising corporation tax, commercial stamps, tobacco excise, or other possible national excises.

Of these (*d*) is the most important.

It was pointed out that (*b*) had no reference to the investigation of any claim such as had been raised by the Congress, that liability for a portion of the public debt of India ought to be undertaken by the United Kingdom.

49. The facts and estimates required from the Committee described in the preceding paragraph should not take long to produce. There will remain to be decided, in the light of them, certain questions as, for example,

(*i*) The exact detailed form of the list of Federal taxes (within the general framework laid down by Lord Peel's Report); in particular a final decision will have to be taken about Corporation tax and specific Federal excises.

(*ii*) The initial amount of the contributions from the Provinces and the precise period within which these and the States' contributions are to be wiped out.

(*iii*) The exact method according to which Income-tax is to be returned to the Provinces.

50. There will also be one or two other points left doubtful by Lord Peel's Committee which will fall for decision. It will be necessary to devise a procedure for discussion and settlement of the outstanding matters.

51. It may be that in other fields points of substance directly affecting Federation will also remain for settlement after this Session of the Conference. It might thus prove convenient to use a common machinery for their disposal. It is accordingly agreed that this question of procedure should be postponed to a later stage.

Chairman: That concludes the Report. Now we will go back to the beginning, please.

Paragraph 1.

Paragraph 2.

Paragraph 3.

Paragraph 4.

Paragraph 5.

Mr. Joshi: On that paragraph, I suggest that the word in the second line, " rightly," be replaced by the word " naturally."

Chairman: I accept that.

No. 6, please.

No. 7.

No. 8.

No. 9.

Mr. Sastri: On No. 9—where we say " by the pooling of ideas and by the willingness to forego individual desires for the common good"—I do not think it is satisfactory to ask people to give up their individual desires for the common good. I cannot give up my ideas for the common good, in any case. I might give up my plan, but I could not give up my ideas.

Sir Samuel Hoare: Yes, I think it is meant to go the other way. It is " to forego their individual views for the sake of." I think we could make that clear, could we not? Could you do it by transposition of the words—" and by their willingness to forego, for the common good, individual desires "? I think that would meet you.

Mr. Sastri: Yes.

Chairman: Mr. Sastri is quite right. If I may say so, he often teaches me what good English ought to be.

Chairman: " 10. *The structure, size and composition of the Federal Legislature.*"

Mr. Joshi: I still feel, in view of the proposals made for the constitution of the Second Chamber, that I should adhere to my views that there should be only one Chamber. I should be inclined to make a compromise on that point if I had approved the proposals for the constitution of the Second Chamber. In the first place, I do not yet know how changes in the constitution are to be effected in the future. Secondly, I do not approve that the representatives of the States, in the Second Chamber, should be

selected by nomination. I do not approve, also, of the representation proposed to be given to the Indian States. Lastly, My Lord Chancellor, I do not approve of the Second Chamber because of the equality that it has been proposed to maintain between the two Chambers.

Chairman: No. 11, please.

No. 12. We should very much like to hear the details of your scheme, Sir Mirza. It is very interesting.

Sir Mirza Ismail: The suggestions which I have to place before the Committee on this subject have been embodied in a memorandum, which, by your courtesy, My Lord Chancellor, has been circulated to the members. I have also had the advantage of discussing the proposals with some of them. On this occasion, I have only a few remarks to offer by way of supplementing the memorandum. In the draft Report before us, it is proposed that the Federal Legislature should consist of two Houses, namely, a Lower House composed of 300 members, of whom 200 would be elected under a system of direct or indirect election, while the rest would be chosen by the States; secondly, an Upper Chamber of 200 members elected by the Provincial Legislatures or appointed by the States. We shall thus have two bodies—both somewhat unwieldy in size, and little differentiated from each other in composition, and therefore in outlook. It may perhaps be pointed out that additional qualifications are proposed for membership of the Upper House; but it is doubtful if these will ensure its becoming, any more than the Lower House, a body of weight, experience and character, as we visualised it, or attracting a different type of personnel. The probability is that it will only become a replica of the Lower House. I am quoting from Marriott:—

> "Experience has shown that disputes between two Legislative Chambers . . . . have been most frequent and most bitter in the Upper Houses which are constituted on an elected basis."

The elaborate provisions contained in certain constitutions for removing deadlocks between the two Chambers are an eloquent commentary on the characteristic defects of this form of legislative organisation. Lack of adequate differentiation between the two bodies would be a serious defect even in a unitary constitution; in a federal scheme, such as that we are trying to devise, it would be fatal. The component elements of the Federation would have no representation as such in the Upper House, which is pre-eminently the federal organ of the constitution and "the pledge of the security of State rights."

The draft Report recognises the principle that the Upper Chamber should, in the main, represent the Units as such (paragraph 22), and speaks of its members as being, in a special sense, the representatives of the Federal Units (paragraph 42). But it is obvious that it is only to the members from the Indian States

that such a description could be correctly applied. The members from British India would not be regarded as the representatives of their Provincial Governments, which might have changed, or of their Provincial Legislatures, which might have been dissolved after their election as members of the Upper Chamber.

It is in this view that I have been urging the need for a Second Chamber composed exclusively of delegates selected by and representative of the Governments of the Federation and of the Units; and I would earnestly plead for due consideration to be given to this suggestion before this scheme tentatively outlined in the draft Report is adopted. I am happy to think that the change can be superimposed upon the plan of Federation we have so far formulated without injuring the general framework and also without delaying the building of the structure.

One of the advantages of this proposal which has impressed me, and which will no doubt appeal to some other members of the Committee also, is that it will obviate dissimilarity of methods between British India and Indian India in regard to the selection of members for at least one of the Houses of the Federal Legislature. It is of the utmost importance that the Federal machinery should function effectively. It would be a disaster if, at some early stage, the system broke down and delayed the up-building of a really united India. I feel that there should be no hesitation in agreeing to such a revision if, as I venture to think, there is sufficient reason for doing so. I dare say many of us have read a special article, which appeared in "The Times" of October 23rd, entitled "Australia as a Unit." The experience of that country, which is administered under a federal constitution, is of special significance to a Conference engaged in devising a similar system for India. They have come to realise in Australia the vital importance of close co-operation and concerted action on the part of the Governments of the federated units in all matters in which the country as a whole is interested. They have been forced to this in the hard school of experience and especially during recent years of economic difficulties. The story is so pertinent that I beg leave to quote from it:—

> "Each of the other States also—New South Wales, Victoria and South Australia—although they were near enough to have similar interests, cherishes individuality. State feeling has not diminished with Federation, but has, on the contrary, established itself as a characteristic of Australian life. An Australian is a Victorian or a New South Welshman first, and an Australian only second. A Royal Commission on the Constitution was appointed by Mr. Bruce, and reported later in 1929. They declared that the advantage of having strong self-governing States which could appeal to the local patriotism, knowledge and public spirit, easily outweighed the admitted inconveniences. The events of the intervening years have shaken this argument.

It would be surprising, however, if it were still not strong enough to defeat Mr. Scullin's scheme "—

i.e., of transferring the power of amending the Commonwealth Constitution from the people to the Federal Parliament—

> "But the chief hope for the survival of federalism is that, in a way characteristic of British political institutions, a *modus vivendi* involving no changes whatever is in sight.
>
> The Royal Commission recommended several means for co-ordinating States and Commonwealth action, but it referred to the Premiers' Conference, which was largely the creation of Mr. Bruce, merely as a useful body for this purpose. It could not foresee the great and decisive part which the Conference as an institution was to play in the crisis of the next two years. So valuable an addition to the governmental machinery is not likely now to be discarded. The difficulty of obtaining joint action is the burden of the case against federalism. It would seem to many a mistake to apply too drastic constitutional amendments before at least another means, which offers the main advantages of unification without the objections, has been thoroughly tried."

It will be seen that the problem in Australia was how to arrest the tendency to extreme provincialism so manifest in that country, while, on the other hand, ensuring the survival of federalism, which is recognised as the only possible form of government in a Commonwealth which has such strongly marked diversities of interest and differences of outlook between its constituent units. I need scarcely say how much more necessary it is in India, with her far greater diversities, that the Provinces should be kept together.

It will be seen from the extract that the Australian Commonwealth, in the endeavour to overcome the difficulties arising from inadequate means of ensuring joint consultation and action such as that for which I plead, has had to devise measures which, though in no sense illegal, are outside the constitution. Let us not put aside the lessons of experience by agreeing to a constitution having the serious defects to which I have called attention—a constitution which, I venture to think, would be neither sound in theory nor effective in practice.

Chairman: Now No. 13, please—the second of these plans. Your Highness of Dholpur, this paragraph refers to your suggestion.

No. 14, please.

Sir Manubhai Mehta: May I be permitted to put forward the views of His Highness The Maharaja of Bikaner, who is unfortunately absent to-day. It should be put on record that he had pressed for a larger representation of the States in the Upper Chamber. While pressing for representation of the States on terms of absolute equality, and a fifty per cent. participation in the

Senate, His Highness ultimately thought that even a forty per cent. representation would be acceptable if the total membership was extended to 300 in the Senate and 450 in the Lower Chamber.

H.H. The Nawab of Bhopal: I do not sit here to express the views of myself alone, and therefore I must place before this Committee what my mandate is. The mandate which the Chamber of Princes gave at its meeting last March specifically required its representative to claim 50/50 representation in the Upper House, for reasons already explained, and to try to secure individual representation at least for those States which were members of the Chamber in their own right. The numerical strength of the Upper Chamber which has been proposed seems to be too small to meet that demand. I have no doubt that the proposals, as contained in the Report, would be considered very carefully and also sympathetically by the Chamber; but certain States may find it very difficult to accept suggestions which would involve the grouping, for purposes of representation in the Upper House, of States now individually represented in the Chamber.

Mr. Joshi: I do not think that the numbers proposed in the Report for the membership of the Chambers are adequate. But, as a matter of compromise, I should be quite willing to approve of the proposal of His Highness The Maharaja of Bikaner of the numbers 300 and 450. As regards the proposals to reserve representation for the States, I do not approve of the percentage of 40 seats being reserved for the States; but, as a matter of compromise, I should be quite prepared to reserve 33⅓ per cent. in the Upper Chamber. In the Lower Chamber, I am not prepared to give any reserved representation to the States. The representation in the Lower Chamber should, I think, be distributed according to the populations.

Mr. Jinnah: It might be noted that we do not agree to the principle at all, either in the Upper or in the Lower Chamber. We still remain unsatisfied that there is any reason for adopting it.

Chairman: Is not that extraordinary? Some say that it is too small and others that it is too large!

Mr. Gavin Jones: This question has been argued out, and we say that there should be 150 for the Upper Chamber and 250 for the Lower.

Mr. Sastri: I should like your leave to mention the figures put before the Committee by His Highness The Maharaja of Bikaner. In my judgment, it would be very difficult to keep the figure for the Lower House at 300, and, as I accepted in my original remarks, His Highness's argument that it would be very difficult to refuse representation to the Princes who had been included in the Chamber, the figure 200 for the Upper Chamber seems also to be inadequate. I should like to repeat that, while I approved of the line of reasoning which leads certain members of the Committee to prefer small to large Houses, the conditions of India and her

infinite variety preclude our paying too much attention to that point; and it seems to me we should be wise to recognise from the outset that large Houses, while they may not also conduce to despatch of business or of efficiency, will certainly secure that, upon all occasions, the wishes of every section of the community have been fully represented, and that public business, when it is transacted and accomplished, shall be really the reflex of opinion in all its phases and in all its brnaches. I therefore recommend large Houses rather than small.

Dr. Ambedkar: Lord Chancellor, I should like it to be noted that I agree with my friend, Mr. Joshi, in the figures he has suggested for the strength of the two Houses; and with regard to the question of weightage, I agree with my friend, Mr. Jinnah, that the population basis of representation ought to be taken as the basis in both the Houses.

Pandit M. M. Malaviya: I agree with Mr. Sastri, for the reasons given by him, that the numbers should be 300 and 450. As regards weightage, I think there should be no weightage given in the Lower House. I agree to weightage in the Upper House for the States.

Mr. Jayakar: Lord Chancellor, I agree with the remarks which have been offered to the Committee on behalf of The Maharaja of Bikaner, as elaborated by Mr. Sastri.

Sir Akbar Hydari: My Lord Chancellor, I was going to remain silent, because I thought, on the whole, the Report was so very fairly drawn up; but when everybody is having his numbers recorded, I should like to have my number recorded. It may be, in the Upper House, not more than 100, and, in the Lower House, not more than 150. I have accepted the other as a compromise.

Sir Tej Bahadur Sapru: I do not propose to make a speech. I will only say that I will agree with the suggestion made by Sir Manubhai Mehta on behalf of His Highness The Maharaja of Bikaner, which has been more or less adopted by Mr. Sastri. As regards the question of weightage, I have always been of the opinion that the Indian States are entitled, on every consideration of fairness, to weightage. I am glad that Pandit Malaviya has agreed to a 40 per cent. weightage for the Indian States for the Upper Chamber. I go one step further. Although, in my original speech, I saw no reason in support of weightage in the Lower House, the question now is, to my mind, not whether one view is right or the other view is right—the question is whether we can come to a settlement by agreement. I would therefore suggest that, so far as the Upper House is concerned, we should offer them 40 per cent., and so far as the Lower House is concerned, we should offer them $33\frac{1}{3}$ per cent. As regards the numbers of the two Houses, I am more or less in agreement with what Sir Manubhai Mehta and Mr. Sastri have said.

Sir Samual Hoare: Lord Chancellor, I am afraid as long as this Committee sits we shall never all of us agree about the num-

bers. I have given my view about numbers time after time. I am for small numbers; I have never made any secret about it. At the same time, I realise there are many members of the Committee who prefer larger numbers. My view had been based upon two considerations: first of all, that what we are doing is creating, not a House of Commons, but a Federal Chamber empowered to do a limited number of specific duties. I always thought that for that, both on the grounds of expense and efficiency, a small Chamber is better qualified. At the same time I do realise the fact that somehow or other we have got to get this Federation into being, and therefore one cannot impose terms upon other people that they will not accept. I would therefore suggest to my colleagues of the Committee to-day that we should leave this paragraph as it is. I think it not incorrectly sets out the views of the Committee; and I think that we can go on talking here for days and weeks, and months, and we shall never all of us agree about any particular number. I would suggest, therefore, leaving the Committee's Report as it is, leaving this question to be settled by subsequent negotiation between the various interests concerned.

Chairman: Had not we better leave it like that? It is as near as may be. I expect, if every one of us put down the numbers now and we were to take the average, it would be more or less right. What I have done is this. I have put it down as near as may be. There will be these little adjustments necessary. Let us leave a little over for somebody.

Now we come to paragraph 15.

Mr. Sastri: I am not in favour of the inclusion of the last sentence:—

> "In the event of the original adherents not forming a substantial proportion, that is to say, at least one-half, of 'Indian India,' it will probably be desirable to devise some method of weightage," etc.

I am not in favour of any weightage being given, however small the number which first comes into the Federation.

Sir Samuel Hoare: If no words of this kind are put in, and if the door is not left open in this kind of way, there are two reasons for objecting, I think. It seems to me that, first of all, the Princes might say "We are putting ourselves into a very weak position. With regard to the small number of Princes who are ready to come in at once, our voting will be of so little account that we shall not be able to make our influence felt." It will be therefore a deterrent against those Princes, who are ready to come in at once, coming in quickly. I want to avoid that contingency. On the other hand, there is the other aspect of the case, namely, that many of us—I think all of us—in this Committee do regard a substantial representation of the Princes as an essential factor in the Federation. If the voting power of that factor is really insignificant we do not then have that essential

part of the Federation in being. In view of that, and without dictating in any way how this procedure should be arranged, I should have thought it was wise to have some such paragraph as this in our Report. It does not tie the members of the Committee down to any definite figure. At the same time it does leave a door open through which it may be easier for the first of the Princes in the Indian States to come into the Federation.

Mr. Jinnah: Who will decide it?

Sir Samuel Hoare: I quite agree that that is a difficult question for me to answer straight away, because there are going to be a number of these questions which will have to be left open after the Conference.

Mr. Jinnah: The danger is this, if you leave these words in. You leave it as a discretion of the deciding authority, and we do not know what may be decided.

Sir Samuel Hoare: But I think we must leave a great many things to the deciding authority. I do not think we can help that.

Mr. Jinnah: But this is too serious.

Mr. Sastri: I should think that our deliberations so far have disclosed to everyone here, and I expect to everyone in India who has followed our proceedings, the importance and the necessity of Federation. I do not think the Princes will hesitate very much to come into the Federation, especially after the very fine example that has been set by some of the very enlightened representatives of that Order that we have had here. I do not think it necessary—and I am very decisively of that opinion—to offer any reward, which may be considered illegitimate from certain points of view, to those " good boys " who come in in the first stage. There is also a certain risk which, from the point of view of the Princes themselves, I desire from the first to obviate. I should like to be frank in this matter. We are all aware that the inclusion of the Princes in the Federation, and the great importance and even weightage that we allow to that Order, are for the purpose of introducing a certain element of stability into the Legislature. I should not like that idea, in the interests of the Princes themselves, to be made too obvious by being given expression to at every turn. The idea that if we had, for example, five Princes from different ends of India, two from Madras, one from Upper India and one from Kathiawar—supposing that we had these stray Princes coming in at first—that between them there is some common bond which could be secured by their being given some weightage, is too palpably absurd. I have pointed out already that if any State, for instance, should not find admission in the first stages, the likelihood is that its interests will be best represented by its vote being lodged in the possession of the neighbouring British Indian Province. There is no point that I can see at all in saying that Mysore absent should be represented by Kashmir present. I cannot see the reason for it at all, unless it is for the purpose of giving to the Princes who come in a certain vote which they would consider

decent as a counterpoise to British India. That way of looking at the matter I deprecate altogether. When the Federation is formed, an Indian State is to all intents and purposes like a British Indian Province. That the Indian States should regard themselves still, for voting purposes, as a separate entity, to be strengthened where they are weak by illegitimate means, seems to me an idea which this Report ought not in the least degree to encourage; and I am therefore strongly of the opinion that that sentiment should be expunged.

Sir Samuel Hoare: I do not know whether I could make a suggestion that might meet Mr. Sastri's point. I do not agree with his arguments—I will say that—but I will not go into them now. I do not regard this question from the aspect that he has just described; but it is clear that there are the two views in the Committee. The view that I have just expressed was expressed some weeks ago, when the Princes were dealing with this question; and I remember His Highness of Bikaner saying a word or two about it. Would it not be a good thing simply to state the fact, and instead of saying that it will probably be desirable, to amend the sentence in this way?—Begin the sentence—"*It has been urged by some* members of the Committee"; simply stating a fact. "It has been urged by some members of the Committee that, in the event of the original adherents not forming a substantial proportion"—that is to say, at least one-half—"of Indian India, some method should be devised by which their voting strength would be temporarily augmented pending the accession of other States." That does not tie the Committee down to any recommendation; it merely states the fact that some members of the Committee have urged that procedure.

Pandit M. M. Malaviya: I very confidently hope that more than 51 per cent. of the population of Indian India will be represented at the first time that the Federation will come into existence, and that the need for the adoption of any such method will not arise.

Sir Samuel Hoare: Yes; I think that meets my view. Like Pandit Malaviya, I also hope that the contingency will not arise.

Chairman: We hope that the number of Princes who will at once join the Federation will prevent such a contingency from arising.

Sir Muhammad Shafi: We hope for all sorts of things, but if these things do not happen, what then?

Chairman: You do not mind us recording a hope?

Mr. Jinnah: We do object to the acceptance of this proposal.

Chairman: It is not accepted at all. All that has happened is that some members are saying that they think that a method will have to be devised; and they all join in the hope that the contingency will not arise. Some share in the hope; others do not.

Mr. Jinnah: That is not quite fair. You should read your Report, My Lord. It does commit this Committee to the principle that, in the event where the hope is frustrated, some deciding authority may give them . . . . . .

Chairman: No; you are introducing the words " some deciding authority ". All that it is saying is that somebody is expressing the hope that it will be done. If you like, we will express your hope otherwise.

Mr. Jinnah: I can tell you very frankly that I am opposed to any principle of the kind in any event.

Chairman: Very well; I think that will do.

Mr. Jayakar: Do I understand—I want to have my mind made clear—that, in the alternative formula which Sir Samuel suggested, the word " weightage " disappears?

Sir Samuel Hoare: " Some means should be devised by which their voting strength would be temporarily augmented pending the accession of other States." I am willing to draw a distinction between my formula and that of Mr. Jinnah. Put in the word " however "; that shows that nobody is being pledged to anything which he does not support.

Mr. Jinnah: In the event of the hope being frustrated, the voting strength is to be " augmented ".

Chairman: Let us be perfectly clear. What we are saying is this. Some members of the Committee think that in certain eventualities there should be an augmentation—I will use your word " weightage " for a moment. But only some members think that. On the other hand, everybody hopes that no such eventuality will arise.

Mr. Jinnah: I have no objection to your stating that certain members have so stated.

Chairman: Very well; we will put it in that way: " Some members have stated ".

Pandit M. M. Malaviya: " Have expressed the opinion."

Chairman: " Have expressed the opinion." The only difference between you, Mr. Jinnah, and Sir Samuel Hoare is this. He has said " It has been urged by some "; you want to say " Some members have stated their opinion ". It is the difference between " stating " and " urging "; but I am sure you will accept the word " stated ", Sir Samuel?

Sir Samuel Hoare: Entirely.

Mr. Jinnah: I was not raising the objection in regard to the word " stated " or the word " urged ". I do not mind any word.

Chairman: " Some members have stated it as their opinion that, in the event of the original adherents not forming a substantial proportion, that is to say, at least one-half, of ' Indian India ', some method should be devised by which their voting strength will be temporarily augmented pending the accession of other States."

Mr. Jinnah: " Should be."

Chairman: " Should be "—that is right. " But we all hope that such an eventuality will not arise."

Mr. Jinnah: " And some members do not agree to any weightage."

Sir Akbar Hydari: I want to be quite clear about this. If more than half join, then the portion representing the States will be actually what the States are entitled to, and nothing more than that.

Dr. Shafa'at Ahmad Khan: Yes, that is clearly what it means.

Sir Samuel Hoare: I think it is better not to go into that detail but to leave it more general. I think I would leave it at least one-half. I think it is better to leave that to subsequent negotiations.

Sir Akbar Hydari: Yes.

Chairman: Number 16, please?

Number 17?

Sir Provash Chunder Mitter: On No. 17 I want to be clear on one point in the last sentence. Apparently members of the Provincial Legislature will be entitled to stand for the Federal Legislature. We have not said anything as to what will happen if such a candidate succeeds. Is it the opinion of the Committee that he should be a member both of the Federal Legislature and of the Provincial Legislature? I thought that was not the intention. The only point to which I desire to draw attention is that that might be stated. I have no objection to a member of the Provincial Legislature standing for the Federal Legislature, but if he succeeds I want to know what your intention is.

Chairman: You do not want him to be a member of both?

Sir Provash Chunder Mitter: That is what I am suggesting; I am leaving it to the Committee to decide that question.

Mr. Zafrullah Khan: That is the present position.

Chairman: " But no person should be allowed to be a member of both Legislatures."

Sir Samuel Hoare: Is everybody agreed about that? I have an open mind about it. Is it a good thing to impose that condition or not?

Sir Provash Chunder Mitter: I think so. It would be rather difficult to discharge the duties adequately in both places.

Sir Tej Bahadur Sapru: May I point out that, under the Minto-Morley scheme, a man could be a member of both the Provincial and Central Legislatures? I have known cases of that kind. Under the present constitution, you have to be a member of one or the other—you cannot be a member of both.

Sir Samuel Hoare: I am not quite sure whether that is necessary for us to accept.

Sir Muhammad Shafi: If I may remind my friend, Sir Tej Bahadur Sapru, in the first two Minto-Morley Reform Councils that was the rule; but the rule was abandoned in the third Minto-Morley Reform Council for reasons of convenience and so on. I was myself a member of both the Punjab Council and the Imperial Council in the second; but in the third I could not be.

Sir Tej Bahadur Sapru: We started like that.

Pandit M. M. Malaviya: May I say that was brought about after an enquiry by the Government of India? Opinions were asked of those of us who had been members of both Legislatures, and we expressed the view that it was not possible to be a member of both. I was asked and I expressed the opinion that one member could not do the duties in both places.

Sir Samuel Hoare: I expect that is so in 99 cases out of 100—that is what actually happens—but is it wise here and now definitely to state that it should never happen? Is it not possible that you might have a Provincial Minister of exceptional value who might, with great advantage, both to the Province and to the Centre, be also a member of the Central organ as well?

Pandit M. M. Malaviya: We found that meetings were held and dates fixed in such a way that we could not do our duty in both places; it was unsatisfactory.

Sir Samuel Hoare: I should have thought that would depend very much upon the procedure of the Chambers.

Pandit M. M. Malaviya: We are dominated by the climate. The whole of the work of the Legislature has to be finished within a certain time. It must be finished in March or the beginning of April; and we found it not practicable to serve on both.

Sir Samuel Hoare: I do not want to press my point. I have expressed my view about it. I should be guided by the general body of experienced opinion about it here.

Mr. Iyengar: It was found to be impracticable.

Chairman: Then we will put in the words: "Provided that no person shall be a member of both Legislatures."

Sir Akbar Hydari: Does that apply also to the Indian States?

Chairman: No.

Mr. Jinnah: Before you leave paragraph 17 may I say that, so far as we are concerned, we are not at present prepared to commit ourselves to the system of single transferable vote?

Chairman: Thank you very much, Mr. Jinnah. Now paragraph 18.

Mr. Joshi: I want to say that, in my opinion, the Indian States in the Upper Chamber should be selected by the same method by which the representatives of the British Indian Provinces are selected; that is, wherever there are Legislatures in the States, the representatives of the States shall be elected by these Legislatures. Where these Legislatures do not exist, then they shall be nominated until such Legislatures are established.

Chairman: No doubt the States will take note of your opinion, Mr. Joshi. Now we go on to paragraph 19.

Sir Manubhai Mehta: May I refer to the words appearing in line 6 of paragraph 19—" existing local self-government bodies "? To me it appears that this is rather too sweeping. It would exclude not only the municipalities and the district local boards, but even village communities and village local boards.

Chairman: What words do you suggest then?

Sir Manubhai Mehta: If the idea is merely to exclude municipalities, it would be better to say so.

Sardar Ujjal Singh: And district boards as well.

Sir Samuel Hoare: At the same time, we do want to leave the door open for an unbiassed enquiry into the unheard-of methods of village voting that did emerge in our earlier discussions; and I am not sure really that this wording does not go a bit too far. I think it would be better to state it more explicitly.

Chairman: What are the words you want, gentlemen?

Mr. Iyengar: " The existing statutory local municipal bodies." We are now trying to say that existing statutory authorities which are constituted for one purpose should not be given the right to select representatives for the Legislature. If, in our further investigations, we are able to arrive at some method of indirect election which will give the village a unit of representation in a different manner, we can constitute them for those purposes. What we want now to say is that existing statutory bodies, discharging statutory local functions, should not be availed of for the purpose of securing representation in the Legislatures. If you put that in I think we shall be perfectly safe.

Chairman: What are the words, Mr. Iyengar?

Mr. Iyengar: " of any existing statutory local self-governing bodies."

Sir Provash Chunder Mitter: I wish to say on that point that in the law there are existing statutory gradings of votes which will be very suitable. Therefore, my suggestion is to mention some existing statutory bodies—district boards, local boards—something like that. What I am aiming at is that, because an Indian Village Board is a statutory body, that should be enough.

Mr. Iyengar: I am not saying that the vote of any village organisation should be ruled out. What I am referring to now is the statutory character of these bodies. If you really want to constitute a village union for the purpose of election to the Legislature you may constitute it.

Sir Provash Chunder Mitter: If you make that clear I have no objection.

Chairman: I understand the point. What are the words you want, though?

Sir Provash Chunder Mitter: I would like these words, Sir— "Local self-governing bodies, such as municipalities, district boards and local boards."

Sir Samuel Hoare: Would it not be better to explain it in a footnote—to leave the word as it is and then have a footnote to say, "This expression does not mean the exclusion of "—whatever the term may be—village boards or village panchayats? Would not that be the best way to do it?

Sir Provash Chunder Mitter: Yes, Sir.

Chairman: "This expression does not mean the exclusion of village panchayats."

Mr. Iyengar: That will cover it.

Chairman: Now No. 20, please.

Mr. Jinnah: On paragraph 20 I do not quite follow this. You say:—

> "The Committee therefore recommend that this body should be charged also with the duty of making proposals for the constituencies to return the British Indian members of the Lower Chamber of the Federal Legislature, and that it should explore fully the alternatives of direct and indirect election indicated in the preceding paragraph."

Well, as far as we are concerned we are opposed to any system of indirect election.

Chairman: Thank you very much. I understand that.

Mr. Jinnah: In relation to the Lower House, of course.

Chairman: Yes, quite so.

Sardar Ujjal Singh: In the same paragraph, it is, I believe, not quite correct to say:—

> "some method of indirect election, as recommended by the Franchise sub-Committee of the Conference."

The Franchise sub-Committee did not go into the question of direct or indirect election at all. So far as the suggestion in the Franchise sub-Committee's Report is concerned, it only contemplated direct election and an enfranchised population to the extent of twenty-five per cent., and suggested that some methods ought to be explored by which those who will not be enfranchised might find some sort of representation by the Mukhi system or the system suggested by Lord Zetland.

Sir Muhammad Shafi: I do not think the Committee made the suggestion; I think it was Lord Zetland, not the Committee, who made it.

Sir Provash Chunder Mitter: The Committee also made the suggestion.

Sardar Ujjal Singh: This is paragraph 4, page 57 of the Report:—

> "We recommend that, in addition to providing for this increase, the Commission should consider the introduction of a scheme by which all adults not entitled to a direct vote would be grouped together in primary groups of about 20 or in some other suitable manner, for the election of one representative member from each group, who would be entitled to vote in the Provincial elections either in the same constituencies as the directly qualified voters or in separate constituencies to be formed for them."

So this would not be a correct reproduction.

Mr. Jinnah: May I remind the Committee that this came up before us once, and we all came to the conclusion, after examining the record, that so far as the question of the electorates and the franchise for the Federal Legislature was concerned, the Franchise Committee had left it out of their consideration? They did not go into it.

Sardar Ujjal Singh: That is paragraph 14. It says:—

> "The form of the Central or Federal Legislature has not yet been decided, and in these circumstances we do not find it possible to make any suggestions regarding a suitable franchise system."

Chairman: What alteration is suggested?

Mr. Jinnah: That it should be dropped.

Chairman: We will leave this out.

Mr. Sastri: I wish to endorse Mr. Jinnah's suggestion that this should not be considered in any shape or form.

Mr. Jayakar: May I ask whether these words are intended to include the scheme suggested by Mahatma Gandhi for the indirect election?

Sir Samuel Hoare: I should have thought that they covered all the possible schemes.

Mr. Jayakar: I want to support the scheme put forward by Mahatma Gandhi.

Chairman: It was meant to cover that.

No. 21.

Mr. Sastri: I feel a certain difficulty in regard to the Bombay Presidency, which by some chance has been selected as an example. That is a consideration which is likely to be forgotten. Bombay may be divided into Bombay proper and Sind. In that case the argument would lose a great deal of its importance—you cannot afterwards place Bombay in the same category as other Presidencies, when it has been shorn of Sind.

Mr. Jinnah: I think it would be better off!

Sir Provash Chunder Mitter: There is no doubt that the Bombay Presidency occupies a very big position, because of the ports of Bombay and Karachi. If we proceed on a population basis and then give a weightage for important ports, we shall get a right principle.

Chairman: I follow.

22, please.

Sir Akbar Hydari: My Lord Chancellor, I want to suggest a little verbal alteration. I would prefer to put down the number in the Central Provinces at 5 and leave out Berar.

Sir Maneckjee Dadabhoy: I protest against that.

Sir Akbar Hydari: Berar has always sent its representatives separately.

Sir Maneckjee Dadabhoy: Sir Akbar Hydari is not aware of the importance of the Central Provinces.

Sir Akbar Hydari: I am quite aware.

Sir Maneckjee Dadabhoy: And the part that the Central Provinces has played in the Legislative Assembly.

Sir Sultan Ahmad: And also here.

Chairman: You want to leave it out?

Sir Akbar Hydari: Yes. I mean, it must be definitely understood that the quota for the Central Provinces does not include Berar, whatever may be the number.

Sir Provash Chunder Mitter: With regard to the proposal in paragraph 22—" But the suggestion has been made that a possible solution might, for example, be to assign to each of the Provinces which exceed 20 millions in population, namely, Bengal, Madras, Bombay ", etc., 17 seats—in paragraph 21 we have already deviated from the population principle, and I would suggest that the Provinces with a population of more than 30 millions should have a higher representation.

Chairman: I think we must leave it as it stands. We note your objection.

Mr. Jinnah: With regard to the North-West Frontier Province, I know this number will not satisfy the people of the North-West Frontier Province.

Mr. Zafrullah Khan: The Report of the Simon Commission also recognises that, owing to its peculiar position on the Frontier, and so on, it should have a larger number.

Chairman: I know that.

Now 23, please.

Mr. Gavin Jones: Sir, I would like to point out that Bengal and the United Provinces have not been very well treated in this distribution of seats in the Lower House—Bengal especially. Why Bombay should have weightage against Bengal I cannot quite see, because Bengal really is a far more important centre of commerce

and industry than Bombay. I am a United Provinces man, so that I can say so. Also Bengal has double the population of Bombay. I certainly think this needs reconsideration.

Chairman: It is only given as an example.

Sir Provash Chunder Mitter: I would like to add this, that not only have Bengal and the United Provinces double the population, but they also have trading interests which are very important. Further, Bengal has the important Port of Calcutta.

Pandit M. M. Malaviya: May I suggest the addition, at the end of paragraph 22, of the words—"This matter will require further consideration"?

Chairman: Very well; we will put at the end—"this requires further consideration."

Mr. Zafrullah Khan: Here too we want to draw attention to the position of the North-West Frontier Province on the same considerations.

Sir Akbar Hydari: With regard to the number of the Central Provinces, there again, it must be taken as excluding Berar.

Chairman: Yes, excluding Berar.

Mr. Jayakar: I do not wish to commit myself to the view that any weightage that may be given to Bombay should be through the special representation which Indian and European commerce has. I should like to leave that question open, as to how that weightage should be distributed.

Pandit M. M. Malaviya: A similar remark about further consideration should be added at the end of 23.

Sir Provash Chunder Mitter: Wherever we deal with Bombay, the question of the separation of Sind should be borne in mind.

Chairman: Now No. 24:—"Apportionment between the States of their quota." This is rather a matter for the States, and it is rather a pious expression of opinion. We are only suggesting it in a friendly sort of way to you. No doubt you will receive it in the same sort of way—so that we need not trouble about that.

H.H. The Nawab of Bhopal: The time limit which is suggested may be found to be too short to enable the Princes to arrive at an understanding amongst themselves. The Government of India are already making certain enquiries in this connection, and their Report is awaited. Besides that, the Chamber of Princes meets in session, and if the Committee is then set up, it may perhaps be difficult, taking into consideration the complexity of the question, to secure an understanding between the interests and groups concerned. We realise the necessity of an early decision in the matter, and I should like to assure the Committee that every possible effort will be made to arrive at a very early decision. It may, however, be found, when we are working it out, that we may be delayed a few days or a few months. That was the only point with regard to which I desired to safeguard myself, but I have no objection.

Sir Samuel Hoare: We might say " which should not, they hope, extend beyond . . ."

Pandit M. M. Malaviya: Your Highness has no objection to this being left as it stands. If you cannot complete your work in time, everybody will understand.

Sir Mirza Ismail: The addition here made is that the Princes should be invited to arrive at a settlement in the first instance. I presume it is not the Chamber alone that is meant, as several of the bigger States are taking no part in the deliberations of the Chamber, and have to be consulted individually. I take it also that the Viceroy would merely invite the views of the States and of the Chamber, but would not purport to settle the matter. Here I see it is said that the Viceroy should be asked to settle the matter.

Chairman: What words do you suggest there, Sir Mirza?

Sir Mirza Ismail: I should omit altogether the reference to the Viceroy—he should not be asked to settle the question, because in that case he, or His Majesty's Government, through their representative, would be prejudging the case.

Chairman: I accept that. Leave out the words from " the Viceroy ".

H.H. The Nawab of Bhopal: May I go back to paragraph 24 for a moment? I hope I am correct in believing that the decisions given by any Committee which will be appointed by His Majesty's Government, in the absence of an understanding between the States themselves, will not be final and binding on the States coming within the Federation.

Sir Samuel Hoare: They could not be binding. The last word upon the Federation must come from you.

H.H. The Nawab of Bhopal: That is what I want to be made quite clear.

Sir Mirza Ismail: But it says the decision is final.

Sir Samuel Hoare: It may be final from the point of view of the Report. At the same time, you cannot force a State to come in if it refuses to come in.

(*The Committee adjourned at 1-15 p.m. and resumed at 2-30 p.m.*)

Chairman: Your Highnesses and Gentlemen, we have got to paragraph 27 on page 15. Does anybody want to say anything on paragraph 27?

Mr. Joshi: Lord Chancellor, I do not approve of the first sentence:—

> " While the Committee remain of opinion that this question must be left to the decision of the States, it cannot be contended that it is one of no concern to the Federation as a whole."

I do not agree with the first part of the sentence. I am not of opinion that this question must be left to the decision of the States.

I feel that it is a question which must be decided by the mutual consent of the States Delegation and the British Indian Delegation, as it is a question of vital importance to the Federation as a whole. I feel that the representatives of the States in the Lower Chamber should be selected in the same way as the representatives of British India. I note the assurance given by Their Highnesses The Maharaja of Bikaner and the Nawab of Bhopal, but I feel that this assurance does not take us very far. In the first place, any assurance as to the voice given to the Legislature is not of great use, as the assurance given is only on behalf of these two States. His Highness The Maharaja of Bikaner stated that he could not give an assurance on behalf of all States; but, Lord Chancellor, if the States Delegation could speak on behalf of all the States and demand representation and weightage on behalf of all the States, it is not reasonable to state that, in the matter in which the States are to concede certain rights to their subjects, they cannot speak on behalf of all the States. If they could speak on behalf of all the States in demanding representation for themselves, then certainly they could speak on behalf of all the States in this matter also.

Secondly, Lord Chancellor, I feel that the voice which has been promised by Their Highnesses The Maharaja of Bikaner and the Nawab of Bhopal is not of much use, for this reason, that so far as my information goes, the Legislatures of Bikaner and Bhopal have a nominated majority in both places. If you give voice to Legislatures which have a nominated majority, you really give voice to the Ruler himself.

Sir Manubhai Mehta: The position is not correct as regards Bikaner.

Mr. Joshi: All right, Sir. I shall be quite willing to hear what the total strength of the Bikaner Legislative Assembly is, and also to have information about the Legislature of Bhopal.

Sir Manubhai Mehta: I will give you that information.

Mr. Joshi: But I feel that, as the Legislatures are constituted to-day, it will not be the voice of the elected members. If an assurance is given that the voice will only be given to the elected members, it will have some value, although it may not satisfy me wholly. I cannot subscribe to this paragraph.

Chairman: Thank you, Mr. Joshi; I quite follow. No doubt the States representatives will pay attention to what you say.

No. 28, please.

Dr. Ambedkar: I should like to draw your attention to the last four lines of the paragraph. After stating, in the beginning, the recommendations of the sub-Committee in paragraph 34 of their Second Report, Your Lordship stated—

> "We make no recommendation here relating to the first four of these interests, since the decision on this point is one for the Minorities sub-Committee."

I do not think that Your Lordship means that the Committee is indifferent to the representation of those interests, nor, I think, does the opinion expressed in paragraph 34 of the Second Report mean this. What you mean is that you cannot make any recommendation as to the extent or method of representation. I should therefore be obliged if you would amend the passage by adding, after the word " recommendation ", the words—

" as regards the extent or method of their representation."

Mrs. Subbarayan: You may remember that I spoke at one of our sittings on the possibility of securing some special provision for the representation of women in the Legislature, and suggested that the consideration of this matter should be deferred until the Minorities Committee published their Report. But, lest the point be overlooked, I should respectfully suggest that some reference to it be made here, and that the following words be added in line 9 of paragraph 28; after the word " interests ", insert the words

" or to the representation of women in the Legislature."

Chairman: I am much obliged—I am sorry that we left it out—and I am also much obliged to Dr. Ambedkar. We will put in both those amendments. That was an oversight.

Mrs. Subbarayan: On a previous occasion, while recognising the valuable work done by many of the nominated members in the past on the Legislatures, I objected to nomination in the new constitution on principle. I feel that I object to it all the more when I find that the two Chambers may have co-equal powers. I quite agree with the Report that the services of persons of the elder statesman type are most valuable; but I am also convinced that the system of nomination is unwise and undemocratic, and, therefore, that it will be better if the services of such persons too are secured through some system of election. If there is a system of nomination, I cannot help thinking that the whole object of this clause may be frustrated, and that the Ministry may only think of strengthening its own party in the Upper Chamber. Apart from this general objection, I would ask that, in paragraph 32, lines 7, 10, 19 and 22, the word " persons " be substituted for the word " men ".

Chairman: I quite agree, Mrs. Subbarayan. In England we actually held, until about five years ago, that a woman was not a " person ".

Mrs. Subbarayan: Perhaps they meant that she was something better!

Mr. Zafrullah Khan: In our General Clauses Act, it says that, whenever " man " is used, it includes " woman ".

Mr. Iyengar: I desire to associate myself with what my friend, Mrs. Subbarayan, has said as regards nominated members. I also agree that it is very useful to have these elder statesmen in the Upper Chamber; but surely, if these elder statesmen are really wanted by the country, it would certainly be possible for them to

come in by some constituency or other. I think the principle of nomination is vicious and we should get rid of it altogether.

Dr. Ambedkar: I should like to associate myself with what has fallen from Mrs. Subbarayan.

Mr. Iyengar: I suggest that the whole of paragraph 32 should be omitted.

Sir Samuel Hoare: Lord Chancellor, I hope you will not do that. I thought that a limited number of these nominated members would add an element of strength to the Chambers. There are, rightly or wrongly, a certain number of people whom you will not get into either Chamber by election, and it is that kind of people that I contemplate. I do not contemplate a great block of nominated members, but I do contemplate this small section of elder statesmen or elder stateswomen.

Chairman: I quote follow the objection. We will make a note of that. I do not think the objection is to the elder statesmen and elder stateswomen, so to speak, helping on people; but the difficulty is with regard to nomination.

Sir Tej Bahadur Sapru: May I be permitted to point out that the provisions of 31 and 32 seem to me to be a considerable advance over the last Report? In the last Report, what was contemplated was official representatives of the Crown subjects. That Your Lordship has done away with in the present Report. Approaching the matter from that point of view, it seems to me to be a considerable advance. Now, in paragraph 32, you do not suggest the nomination even of officials; but what you suggest is that there may be three or four men who, for reasons mentioned by you in that paragraph, may not find it possible to go into the Legislature, and so the Legislature may not be able to obtain the benefit of their experience which may be of a very valuable character. It is not that I am fond of nomination—I should really like to have nomination done away with—but I do not understand that is going to be a permanent feature of the Constitution. I gather you are only providing for a very small, insignificant and almost negligible number of three or four men who might be useful to us in many ways.

Chairman: Yes, that is what we thought.

Sir Tej Bahadur Sapru: They will not be officials?

Chairman: No; we have excluded officials altogether.

Sir Tej Bahadur Sapru: Yes; and from that point of view, it seems to me to be a considerable advance. I support paragraph 32. My reasons are that, in the welter of ideas which the new constitution will set free, what has been called " cross-bench " mentality will be more common than in this country, and I want to provide for that " cross-bench " mentality for a few years more.

Sardar Ujjal Singh: I want to support this paragraph, but I want to put some limit to the number, last time you put a limit of ten. Some limit ought to be put—five or six or seven. There is no limit put down here.

Chairman: Is that in both Chambers?

Sardar Ujjal Singh: In the Upper Chamber only.

Sir Maneckjee Dadabhoy: I wish to say I am in entire agreement with Sir Tej Sapru. I am looking forward to a day when I shall welcome Mrs. Subbarayan in the Council of State as a nominated member.

Chairman: I hope you will be there too.

Pandit M. M. Malaviya: May I know—how is a question like this going to be decided, where opinions are divided. Are we to record our different votes?

Chairman: No. I think the general opinion is in favour of it; but in the shorthand notes your objection will appear.

Now number 33. "Qualifications and disqualifications for membership."

Now number 34.

Mr. Zafrullah Khan: In number 34, I presume the age limit laid down in the last line refers to candidates only and not to voters.

Chairman: Yes, I think so.

Mrs. Subbarayan: With regard to the proposal that the existing rules regulating the qualification of voters, and consequently of candidates, for the Council of State, should be adopted as a model for candidates for the Second Chamber of the new constitution, this would, in my opinion, react most unfairly on women. There are extremely few women who possess the present qualifications; and, consequently, the number of women who would be eligible for the Second Chamber, if this proposal is enforced, would be infinitesimal. I think it is most important that there should be women members of the Second Chamber; and, therefore, there should be a considerable number of women eligible for it. It is proposed that the prescription of the detailed qualifications shall be left to the Expert Franchise Committee. I would therefore ask that it should be a definite general instruction to that Committee to secure the eligibility of a considerable number of women as candidates for the Second Chamber. I should like this point to be added to this paragraph.

Chairman: I think that is right. There, again, my apologies; but we could not remember everything. Have you any form of words, by any chance?

Mrs. Subbarayan: I will leave that to you, Lord Chancellor.

Chairman: Will you tell me this? Would you say quite bluntly that the qualifications should not apply to women, or would you say there should be some qualifications?

Mrs. Subbarayan: It is difficult for me to suggest anything now. I think the Expert Franchise Committee should bear this point in mind and meet it.

Sir Samuel Hoare: Would it meet you if we put in the words "taking into account the claims of women"—some general phrase of that kind?

Mrs. Subbarayan: Yes, that will do.

Chairman: We will say " should be adopted as a model for candidates for the Upper Chamber, taking into account any special provisions that may be required for women ".

Dr. Ambedkar: I find considerable difficulty in subscribing to this part of paragraph 34—the Council of State qualifications being taken as a model. It seems to me that it will entirely block the representation of the Depressed Classes.

Chairman: We must not do that.

Dr. Ambedkar: Liberty should also be given to the Franchise Committee to take this into consideration in framing their model rules

Mr. Joshi: The qualifications of voters for the Council of State will not enable the working classes to become candidates. Some of these qualifications are not possessed by the working classes. I would suggest that tenure of office in a trade union should be added. I submit that special mention should be made in this Report that these classes, who are not likely to have the qualifications mentioned in the rules of the Council of State, should be provided for by the devising of some qualification which will be possessed by these classes.

Diwan Bahadur Mudaliyar: One of the qualifications for membership of the Council of State is membership of the Legislative Councils. We have made it clear that the Legislative Councils will send representatives to the Council of State, and that every member of the Legislative Councils will be both a voter and can be a candidate for the Council of State. In the Provincial Legislative Councils, Labour and the Depressed Classes will all be represented. The members of the Legislative Councils will be eligible for membership of the Council of State. It is only when you go outside the Legislative Councils for a candidate that these difficulties may arise. I do not think, in practice, there will be any difficulty in sending a Depressed Class representative or a Labour representative or a woman to the Council of State.

Mr. Joshi: Lord Chancellor, I know the rules for the election of the members of the Council of State and the composition of the voters. If no other class gets the qualification beyond the members of the Legislature, I can understand that; but if there is to be any qualification besides the qualification of membership of the Legislature, then we must decide what qualifications the other voters should possess—whether it is membership of a certain body, say membership of a trade union. We must devise some qualification.

Chairman: We will see that that is done. We cannot at the moment say what the particular qualification will be, but we will take care to deal with that point.

Mr. Joshi: I am only suggesting office in a trade union.

Chairman: Then we come to paragraph 35. I do not think there is very much on that.

Paragraph 36—" Disqualifications."

Pandit M. M. Malaviya: Towards the end of this paragraph it says " actually undergoing a sentence of detention ". Why should that be a disqualification? If he is undergoing a sentence of detention at the time of the election, he may sit later on.

Chairman: This is what we say:—

> " At the same time, we consider that the rules should be so framed as to disqualify from candidature any person who, at the time of an election, is actually undergoing a sentence of detention and who would consequently be unable, if returned, to fulfil his duties to the Legislature and to his constituents."

What we meant was that it is no use having a man as a Member of Parliament who cannot attend. That is what was meant. I see your point, though, because you say that at the moment of his election he may be undergoing a sentence of detention, but by the time he wants to work he will be out again.

Pandit M. M. Malaviya: Yes.

Chairman: I follow what you mean. We will just alter the meaning there so as to meet your point.

Pandit M. M. Malaviya: So that that will not be a disqualification. A man being under detention at the time of the election will be under no disqualification. We have found in practice that some such provision is needed. Some people have been elected to the Assembly while they were still under detention.

Mr. Sastri: I am going to say a word, with your leave, to support the recommendation in the text of the Report. It appears to me that if a person who is in gaol or otherwise under detention is elected by a constituency, the constituency must be interpreted as expressing a political opinion rather than exercising its franchise. The constituency really disenfranchises itself. We wish to make provision for all constituencies to exercise their franchise and be represented. In this particular case, by electing a person who is under detention, and is therefore unable to exercise his position, the constituency is encouraged to disenfranchise itself, and gets in return only the satisfaction of recording a political opinion against the action of government. I do not see any particular advantage in that, and I therefore support the text as it stands.

Pandit M. M. Malaviya: I regret that I cannot agree with Mr. Sastri. It is not a question of the constituency expressing a political opinion on a sentence passed on an individual. Nobody can say what a proper sentence may be. Mr. Sastri does not take account of what a sentence may be. If a person is undergoing imprisonment at the time of election, and if his constituents have confidence in his ability, integrity, character and public service, and prefer to elect him rather than every other candidate available to them, they are expressing their appreciation of the public service and quality of the man, and not passing any political opinion upon

the merits of his sentence. The sentence may be for some purely technical offence; or it may be for something serious; but whatever it is, when the Committee decides that a conviction should not be a disqualification for a candidate, I submit that this disqualification also should be removed, and that the constituents should be left free to elect a person in whom they have confidence, and that advantage should not be taken of a person simply being under imprisonment or detention at the time of the election to keep him out of the Assembly.

Sir Maneckjee Dadabhoy: I am in entire agreement with Mr. Sastri, but there is another aspect of the question. Suppose that three candidates are standing, one undergoing sentence and the other two also—very able and capable men—at liberty, who should get a chance of competing on fair terms and getting into the Assembly, Council of State or other Chamber. It would not be fair to the candidates at liberty that a person undergoing a sentence should be a candidate. This is a mere matter of popular sentiment. A person undergoing imprisonment will, out of the pure sentiment of the people and their approval of his action, be able to get a larger number of votes than the others who are qualifying on their own merits.

Chairman: You are saying that, if you want to get into Parliament in India, you should get a month's hard labour!

Sir Sultan Ahmed: I support the Pandit Malaviya, and say that, if conviction is not a disqualification, mere detention should not be a disqualification for the candidature. On the other hand, I feel that, if you allow a man to be a candidate for Parliament here, though he may be a minor, provided he attains his majority before sitintg—as recently happened in a case of which you know in this country—I do not see why a person who is under detention at the time of the election should be disqualified.

Sir Samuel Hoare: I am inclined to think that what we really ought to regard, in a question of this kind, is the dignity of the constitution. Certainly, from my own experience, looking back over the last few years since the War, I have seen many cases—I am now speaking of Europe—in which some of the new constitutions have been made really ridiculous by this habit of electing people who, for one reason or another, cannot or will not serve. I should have thought, if you really want a good, up-to-date, working constitution in India, that this was not a step which, upon practical grounds, you would be wise to take. I quite see the point made by Pandit Malaviya, that the man may come out of prison a few days after the election, but I am afraid that many difficulties would arise. We have exactly the same state of affairs here with the disqualification due to bankruptcy. My own advice, looking at the question quite apart from theory, and from the point of view of getting a constitution that will work and getting members *into* the Assembly who will actually serve, and also *not making* your constitution ridiculous, is that this proposal be accepted. I think that it is, as Mr. Sastri has just remarked, a wise one.

Mr. Iyengar: Lord Chancellor, May I ask whether, if you remove the word "consequently", it will not express Pandit Malaviya's idea—" any person who at the time of the election is actually undergoing ..... and who would "—it is cumulative —" be unable, if returned, to fulfil his duty ".

Pandit M. M. Malaviya: No; it would not.

Chairman: I think it would, would it not, Pandit, for this reason? Supposing the election were within three weeks, anybody who had a month to serve would not be eligible. Is that not what you mean?

Mr. Iyengar: That if a man's sentence of imprisonment is such that it will enable him in due time to go and serve his constituency, then he is eligible.

Chairman: Let me put the case to you and see if this is right. Supposing, merely for the sake of argument, you are going to have quinquennial elections. Let us see how it works out. Supposing a man was put up for a constituency and he was undergoing a sentence of ten years' penal servitude. It is obvious that, if he were elected, he could not serve for a single day in that next Parliament, because by the hypothesis he would be doing ten years elsewhere. So you want to say that, if it is a case where a man cannot serve by reason of the length of his sentence, then he is not qualified, is that it?

Pandit M. M. Malaviya: Yes; but what I suggest is it should be left to the electors not to act so foolishly. They must be trusted to act as reasonable men. They would not elect a man who was under a sentence of ten years' imprisonment. But, as it is put, it means that a person who is serving a sentence which may expire shortly after the election is shut out. With reference to what Sir Samuel Hoare said, I submit the mere fact that a man is serving a sentence of imprisonment should not count with regard to the dignity of the House. A man undergoing a sentence of imprisonment may be the most honoured man in the land; we have had instances of it. If there is a man in whom the electors wish to place their confidence and whom they honour, they may prefer that he should be absent for six months than that he should be entirely absent from the sessions of Parliament as a whole. Therefore, I submit that the mere fact of detention should not count against him. It is unnecessary to provide that, if his sentence is a long one or longer than the life of the Parliament, he should not be elected—that should be left to the judgment of the electors.

Mr. Zafrullah Khan: May we not perhaps reconcile the two views by inserting a provision, wherever these rules are laid down, that if, after a candidate has been elected, he fails within a certain time—which may be fixed—to take his Oath and take his seat, it may be at the discretion of the Governor-General to declare that seat vacant.

Sir Samuel Hoare: I think possibly a procedure of that kind might effect what I think most of us wish to see.

Mr. Sastri: A person of that description could be re-elected every time a vacancy is declared.

Mr. Zafrullah Khan: Then he should not be elected in such a case—there should be a provision to that effect.

Sir Samuel Hoare: Of course, what one does want to avoid is a number of candidatures simply for the purpose of propaganda. That has happened very often on the Continent of Europe. People are put up who are either not going to take the Oath or are not going to serve, or for one reason or another are not going to carry out the work of their constituencies.

Pandit M. M. Malaviya: That is a different matter. It can be provided for in a different way.

Sir Samuel Hoare: I do not think it can.

Pandit M. M. Malaviya: What you are considering here is whether there is any justification for making the proposal which is before us. Besides that, there is another matter connected with it. In India, a number of persons are kept as *détenus*, either under a Regulation or an Ordinance. A number of persons are detained *as détenus*. Now, how would their case be affected by this? They are not put on trial. Without trial they are detained for years; they have sometimes been detained over two years.

Chairman: Under a sentence?

Pandit M. M. Malaviya: Without a sentence.

Chairman: But this is under a sentence.

Pandit M. M. Malaviya: That is what I want to make clear—a sentence of a Court of Law. Otherwise they are sentenced—that is to say, the orders are passed against them—under some Regulation or some Ordinance; and it would be a great hardship if they were debarred from standing as candidates.

Chairman: I think, on the whole, it would be better here to do what we have done elsewhere—to put the alternative—Some of us say this, some of us say that. Would that suit you?—because that would preserve your point, you see, without making it definite. Some people rather want to stick to this—Mr. Sastri and Sir Samuel Hoare. On the other hand, your views, which I quite appreciate, are that it ought not to be preserved. Do you not think we had better let it stand, and then put in a caution? On the other hand there were a number of people who are not in agreement with this. Would not that help you?

Pandit M. M. Malaviya: I submit, My Lord, this is a matter about which a clear expression should be made of its opinion by the Committee one way or another.

Sir Samuel Hoare: But you cannot do that. It is no good voting upon a thing like that. We never vote upon anything; and if we did, I do not think it would carry much weight, because it is not the number of votes here that matter—it is the opinion which may be behind us. I would suggest that the best way we can meet

every kind of opinion will be to say some of us think one thing and some of us think another thing.

Chairman: Pandit, supposing we were to put in something like this: "At the same time, some members of the Committee consider "—and then at the end—"On the other hand, a large section— "

Sir Samuel Hoare: Is it a large section?—I do not know.

Chairman: Well, "A section of the Committee are not in agreement with this ".

Pandit M. M. Malaviya: "Are opposed to this view."

Chairman: "Are opposed to this view "; certainly. "On the other hand, a section of the Committee are opposed to this view."

Pandit M. M. Malaviya: Would Your Lordship also add—"being of the opinion that a sentence of detention should not constitute a disqualification ".

Mr. Iyengar: May I know whether the words "sentence of detention" are intended to convey the view that it is a sentence ordered by a Court of Law after trial?

Members: Yes.

Mr. Iyengar: If that is so, we have no quarrel.

Chairman: I think we have it right now. I see the importance of the point.

Now No. 37. I think that is all right.

No. 38—the Oath of Allegiance.

Now we come to a very important paragraph—the relations between the two Chambers. I will take Nos. 39, 40, 41 and 42 together.

Sir Muhammad Shafi: With regard to the recommendation embodied in paragraphs 42 and 43 of the draft Report, I venture to submit that the record of the discussions will show that the overwhelming majority of opinion, certainly among the British Indian Delegation, was to the effect that, while in all other respects the two Houses should occupy an equal position, with regard to the Demands for Grants, they should be cognisable by the Lower House, and that so far as the initiation of Money Bills was concerned, they should first be introduced in the Lower House. The recommendation as embodied in the draft Report is exactly to the contrary. I venture to submit that that ought to be corrected.

Sir Tej Bahadur Sapru: I should like to associate myself with the remarks that have fallen from Sir Muhammad Shafi. While I do think that the powers of the two Houses of the Legislature should, following the well recognised principles of constitutions in various Dominions, be of a co-ordinate character, I should like to make one or two very important exceptions to this general rule, namely, first with regard to the Money Bills, which, in my humble opinion, should always be introduced in the popular House or the

Lower House. That is the practice, too, I find, in every one of the Dominion Constitutions.

Sir Muhammad Shafi: That was one of the reasons I gave for my suggestion.

Sir Tej Bahadur Sapru: Secondly, the question of Supply has got to be very carefully considered and determined. The usual practice is that Supply has got to be voted by the popular House. Well, as a matter of fact, as Sir Muhammad Shafi will be able to tell you, in the present existing Legislative Assembly supplies have got to be voted by the Legislative Assembly first, and then ultimately the matter comes up to the Upper House—merely to be placed before the Upper House. You will agree there, Sir Muhammad?

Sir Muhammad Shafi: Supply Grants are exclusively cognisable in the Lower Chamber under the existing rules. Money Bills are introduced in the Legislative Assembly and then go up to the Council.

Sir Tej Bahadur Sapru: What about the vote of Supply? My impression was that they are never voted upon in the Upper House, but that the vote takes place in the Lower House.

Sir Muhammad Shafi: In the Lower House, yes.

Sir Tej Bahadur Sapru: Now, I would like to have the same sort of practice here, because one great objection that will be taken to these paragraphs in this otherwise excellent Report will be that you in an indirect manner make the Ministry responsible to both Houses, and that is what I want to guard against. Therefore, I would say that it would be more accurate to say that a considerable section of the Delegates from British India—in fact, you might say all the Delegates from British India, unless, of course, Sir Maneckjee Dadabhoy strikes a note of dissent . . . .

Sir Maneckjee Dadabhoy: As I mentioned in my speech, if you will remember, I supported you, and I support you not only now, but I agreed then. I tell you now that we busy and important people in the Council of State do not want to have this bother. We gave that work to you in the Assembly, to manage those things.

Sir Tej Bahadur Sapru: I am very glad to stand corrected by Sir Maneckjee in this respect. Therefore, the position is that, so far as British India is concerned, the representatives in this Committee very strongly support the idea of the ordinary constitutional method and practice in regard to Money Bills and Supply being followed in our constitution.

Sir Muhammad Shafi: And the point was emphasised, I remember, during the debate, that this has been the practice under the existing constitution in India for the last ten years, and is also the practice in all the Dominion Constitutions within the British Commonwealth of Nations.

Mr. Gavin Jones: I am afraid I do not agree. I do not mind whether it is introduced in the Lower House or not; but what I

do mind is that the final decision should be there, and I think that we should, as far as possible, follow the Australian Constitution, which has worked very satisfactorily as far as Money Bills are concerned, and that the final decision should not rest with the Lower House.

Sir Muhammad Shafi: Nobody has said that.

Mr. Gavin Jones: Well, the introduction is not an important matter. I would prefer that Bills should be introduced in the Upper House as well, and I entirely agree with your remarks in your Report, in which you say that the powers of the two Houses should be equal. At the same time, Sir, I should like to point out that in clause 43 they are not equal, because you suggest that the decision should be come to by a Joint Session of both Houses, but that it should be by a bare majority. Well, considering that there will be 200 members in the Upper House and 300 in the Lower House, it makes the Lower House dominant. I think that these matters want very careful consideration, and that we should aim at making both Houses equal. It is a very sound principle for India to start off with.

Dr. Ambedkar: I am still of the opinion, which I expressed when we discussed this matter, that we consent to a Second Chamber only upon the understanding that the Second Chamber shall be a revising Chamber with a suspensory veto. It shall not have an equality of status with the Lower Chamber.

Pandit M. M. Malaviya: I agree with Dr. Ambedkar, and suggest that the whole of paragraphs 39 to 43 should be omitted, and that the whole of this portion of the Report should be recast. We are met to form a democratic constitution, but we are not carrying out that purpose, in my humble opinion. I find that the Report goes much further than the discussion in the Committee; for instance, I find it said that there would be no justification for endowing one Chamber with powers denied to the other. As Sir Tej Bahadur Sapru, Sir Muhammad Shafi and others said, Money Bills for the purpose of Supply should be particularly within the competence of the Lower House; and, in spite of that discussion, I find this opinion expressed in paragraph 42:—

> "We see no reason why the principle of equality of powers should not extend also to the voting of Supply."

I submit that the whole of this paragraph should be recast.

Sir Samuel Hoare: It would be very interesting to hear the opinions of some of the representatives of the States.

Sir Akbar Hydari: I am strongly of the opinion that, as far as the position of the Indian States is concerned, it should be recorded as what it is in this Report. We feel strongly that, at the outset, the powers of both the Houses should be equal in all cases, and it must be left to gradual evolution whether there shall be any differences later on. In the constitution there should be no distinction, with regard to any power or any authority in any matter, between the two Houses.

Mr. Iyengar: I think that the general trend of opinion, as Sir Muhammad Shafi put it, is that Money Bills should originate in the Lower Chamber, and that the Upper Chamber should have the powers over them, as over other Bills, which naturally pertain to an Upper Chamber. In regard to votes of Supply and Demand, the position to-day is that only the Lower House votes for Supply in India. This proposal is to vest this power, which is now solely the prerogative of the Lower Chamber, in both Chambers, with equal power. I desire only to submit that, having regard to the procedure so far followed in the Indian Legislature, the proposal suggested in this Report would be most cumbrous. We have discussed it in detail. There are about a hundred Grants to be put before the House, and ten to fourteen days pass during which Grants are discussed from time to time, and at the end of which there is a guillotine and the closure is put finally. If every Grant and every amendment of a Grant is put in the Lower House, discussed and voted upon; then it goes to the Upper House, where there are amendments thereon; and then, upon a matter whether Rs. 50 should be deducted or Rs. 500 should be deducted, again it goes to the Lower House, and there is a Joint Session over these things. I submit, Sir, that that will constitute an intolerable obstruction to the procedure which should be established in regard to the passing of the Budget. It is not like the state of things in this country, My Lord, where there are Committees of Supply and Committees of Ways and Means sitting right through the year. Our procedure is that on the 1st April . . . . .

Chairman: I need not trouble you further, Mr. Iyengar. I think it is pretty clear. I think these paragraphs will want considerable alteration. This is what I think we ought to report. I will get the language soon. I think I must put it as a preponderating majority or a large majority of British India. If you like, I will put it as a very large majority, in fact I think I might almost say the opinion with one exception; but I will not trouble about that, " are in favour of the Lower House voting Supply, and with regard to Money Bills they are in favour of their originating in the Lower House with a right of the Upper House "—

Sir Muhammad Shafi: After the Money Bill has been introduced in the Lower House and has passed through that House, it will go up to the Upper House just as any other legislation.

Sir Samuel Hoare: Yes, just as any other legislation; that is important.

Sir Muhammad Shafi: The distinction is that, while all other Bills—Bills other than Money Bills—may be originated either in the Upper or Lower House, Money Bills will be introduced in the Lower House. Otherwise they will stand on the same footing as other legislation.

Chairman: I think we must report that a large majority, with one exception, were in favour of that view.

Mr. Zafrullah Khan: I think it had better be put that British Indian opinion was almost unanimously . . . . .

Chairman: Yes.

Mr. Gavin Jones: In my speech on this subject, I quoted the Australian Constitution and suggested that should be the clause put in.

Sir Muhammad Shafi: There is no difference at all between my proposal and the Australian Constitution. If you turn to my speech you will find I gave the exact references to the Sections. What the Australian Constitution also lays down, to the best of my recollection, is that Money Bills should be introduced in the Lower House, should originate in the Lower House. That is all I want, that they should originate in the Lower House. And, Lord Chancellor, if you will permit me, I should like to add one observation. As I say, for ten years past—we are now in the eleventh year—this has been the practice in India; and I know of no school of thought in India, whether European or Indian, which has, before this Round Table Conference, ever raised any objection to the existing practice.

Sir Tej Bahadur Sapru: Arising out of this discussion, may I further point out that it will be necessary for us to come to some decision as to whether you will give the Upper Chamber the right merely of rejecting or also of amending the Money Bill—because that is a matter upon which constitutional practice is divided from country to country, and we have got to arrive at a conclusion upon it. That is a very material point. We know, as a matter of fact, that Money Bills can be amended in certain constitutions, while in other constitutions we know equally well that they cannot be amended. That is a question of policy and on that I do not think there has been any discussion. We have got to arrive at some conclusion.

Chairman: Well, what is your view, Sir Tej?

Sir Tej Bahadur Sapru: I would give the right of rejection, but I would not give the right of amendment, because that destroys the unity of the Budget, the unity of the taxation proposals as they emerge from the Ministry and as they have been supported by the Lower House. That is my humble opinion.

Sir Muhammad Shafi: Our view on this side is that, on the general principle that the greater includes the less, power of amendment also should rest in the Upper House. What will follow is this. Where any particular provision in a Money Bill is amended by the Upper House, it will be sent down to the Lower House, and the Lower House will have an opportunity of reconsidering the position. If the opinions are divergent until the end, then there will be a Joint Session of the two Houses to decide the question. We hold that the power of rejection, as well as of amendment, should rest in the Upper House.

Chairman: Let me get it right. I will come to the States in a minute. I propose to alter the Report so as to give effect to

what appears to me to be the unanimous view of British India, subject to Mr. Gavin Jones. There is no difficulty about Supply; that is the Lower House. With regard to Money Bills, again British India is unanimous, subject to Mr. Gavin Jones, that Money Bills originate in the Lower House, but that they can go to the Upper House. Then, what function has the Upper House?

Mr. Joshi: In this connection may I call attention to the fact that you are proposing to give power to the Government to introduce a Bill in the Second Chamber even after its rejection by the Lower House.

Mr. Iyengar: A Money Bill according to our present proposal should originate in the Lower House.

Mr. Joshi: I am not talking of origination. If you originate a Money Bill in the Lower House, and it is rejected there, you are giving power to the Government to re-introduce the same Bill.

Mr. Iyengar: No, no. It cannot originate again in the Upper House merely because of the rejection. It will always originate in the Lower House.

Mr. Joshi: Then, if a Money Bill is rejected by the Lower Chamber, it cannot be introduced again?

Mr. Iyengar: No, it cannot.

Chairman: I quite see your point, Mr. Joshi, but in law there is a maxim which talks about *enumeratio unius*. I do not think you need trouble about the matter, because if a Money Bill originates in the Lower House and is knocked out there, it cannot originate in the Upper House again. With regard to Money Bills, I want to get you all into line, if I may. They originate in the Lower House. When it comes to the Upper House I think you had better be as unanimous. As I understand, the two positions are these. Sir Tej says rejection only. Sir Muhammad Shafi says amendment as well. Do you not think we had better say amendment as well, and leave it like that?

Mr. Sastri: That is the present practice in India.

Sir Tej Bahadur Sapru: I will not insist. Let there be unanimity.

Chairman: Then I shall report like that. Now, with regard to the States, if you will allow me, Sir Akbar, I assume that the States take a rather different opinion. May I put down that the unanimous view of the States is the opposite?

Members: No, no.

Chairman: Then shall I say that a large number of the States took the opposite view?

Sir Akbar Hydari: I thought it was unanimous on this side.

Chairman: So did I.

Sir Samuel Hoare: It is not quite "the opposite", for this reason. Apart from the question of initiation, you would agree anyhow that the Second Chamber could amend and reject a Finance

Bill. So that it is not sufficient to say that your position is the opposite. It is the opposite of one thing but not of all the things. The better course would be for the States to draw up two or three sentences which did express their view about this matter and put them against the other point of view.

Chairman: The only thing is the initiation, is it not?

Sir Akbar Hydari: Yes.

Chairman: We can make that all right then. I understand that the other side is unanimous that in both cases, Supply as well as Grants, the initiation is in the Lower House, and Supply is for amendment in the Upper House.

Sir Tej Bahadur Sapru: May I be permitted to point out that what we are trying to bring about is that, so far as the Money Bill is concerned, it should always be introduced in the Lower House, power being reserved to the Upper House to reject it or amend it; but so far as the voting of Supplies is concerned, that is a function which purely appertains to the Lower House, and should be outside the scope of the Upper House. I want to explain that, because it is desirable that there should be no misunderstanding on a very important point of substance of this character.

Chairman: The only difference between you gentlemen is this. You are agreed absolutely on everything except one point. Sir Akbar says, initiation of Money Bills in either House; you say, initiation of Money Bills in the Lower House only. Now, that is the difference between you. There is no difference with regard to Supply; there is no difference with regard to rejection or amendment, or anything like that.

Sir Mirza Ismail: There is a difference with regard to that.

Sir Akbar Hydari: There is a difference with regard to Supply, because they say that Supply does not go to the Upper House at all, whereas we say it must go up.

Chairman: All right; you want Supply in the Upper House.

Sir Samuel Hoare: To put it into concrete form, you want the procedure that we have here—namely, that Supply goes into what is called an Appropriation Bill that goes to the Second Chamber.

Sir Akbar Hydari: Yes, quite.

Sir Samuel Hoare: We could easily get that clear.

Mr. Iyengar: I do not know whether it is correct to describe the procedure in the draft as that of an Appropriation Bill. It has been put down here in the form in which it at present exists in the Indian Legislature—namely, in the form of Demands for Grants. Say a Demand for Customs is put forward, that is put forward by the Lower House and it goes to the Upper House. They demand a thousand rupees less. Then it comes back again, and we say, "No, only five hundred rupees less", and that is decided. So far as a Demand for Customs is concerned, that is put forward as a Demand from both Houses. Your Appropriation Bill is an entirely different thing.

Sir Samuel Hoare: Yes, I thought Sir Akbar was not altogether contended with the existing practice in India. I am not giving my view one way or the other, but what I wanted to do was to get Sir Akbar's view quite clear.

Mr. Iyengar: I think there is a confusion about this. If I may say what the position is . . . . .

Chairman: Just wait a moment. There is no doubt what British India wants; the only doubt is as to the position of the States. First of all, Sir Akbar, will you kindly tell us what you want with regard to Supply?

Sir Akbar Hydari: With regard to Supply, what I want is that the Demands for Grants should be discussed and subject to revision in both Houses. That is what I want.

Chairman: Very well; and with regard to Money Bills?

Sir Akbar Hydari: In regard to Money Bills, the same.

Chairman: Now, that resolves the difficulty. I think I will draw up the Report by saying, as Mr. Zafrullah Khan suggested, that the representatives on the British India side are practically unanimously in favour of what they have said.

Mr. Gavin Jones: I am supporting the States' view.

Chairman: Yes, I said "practically". Now, with regard to the States, what am I to say—that the view of the majority is, or that the view of the States is?

Sir Akbar Hydari: The view of the States is.

Sir Mirza Ismail: The majority.

Chairman: Very well; that is good. Now I have got majorities both ways.

Sir Samuel Hoare: On each side it is practically unanimous, is it not?

Chairman: Now we come to Lord Peel's Report on Federal Finance, paragraph 44. We need not take any time over this; I think it was agreed the other day.

Mr. Zafrullah Khan: There is one word which I wish to say with regard to paragraphs 44-51 at this stage. I raised certain points in my speech, and I do not want to repeat them. I find that a good many of them are covered by (*a*) to (*d*) of paragraph 48, and (i) to (iii) of paragraph 49. My only hope is that the Committee to be appointed will keep those points in mind.

Mr. Gavin Jones: One point that I should like to get cleared up is in paragraph 43: is it a bare majority?

Chairman: Yes, the bare majority we have passed. You disagree with that, do you; you want two-thirds?

Mr. Gavin Jones: Or 60 per cent.; that would make it equal.

Chairman: Mr. Gandhi has been good enough to give me this note to read with regard to what we have done up to now:—

"Being silent, I would like to express my dissent in writing from the draft Report in the following among other matters:—

I adhere to the view that one Chamber would be the best for the purpose intended to be served. But subject to certain vital modifications, I would be prepared to support Sir Mirza Ismail's proposal, if the body contemplated by him becomes an advisory body.

The Congress is wholly opposed to the special representation of the interests of Landlords, European and Indian Commerce, and Labour. Representatives of these interests should appeal to the common electorate for their election.

The Congress is similarly opposed to the nomination of members. But specialists should have facility given to them to address the Chamber on required occasions.

There is much I would like to say with reference to the paragraphs about the States, specially on the matter of the representation of the subjects of the States. But I reserve my opinion for the time being. I adhere to the proposal I had the privilege of making on indirect election, or rather, election through delegates, using the villages as units. This scheme is based on adult suffrage, to which the Congress is pledged.

M. K. GANDHI."

Paragraph 44, Federal Finance.

H.H. The Nawab of Bhopal: I desire to bring it to your notice, My Lord, and to that of the Committee, that what was included in my statement made before this Committee the other day is the actual position of the States, as far as the Chamber of Princes is concerned, in regard to Federal Finance. I repeat this, because there is a slight difference of opinion in one or two matters concerning the States between that Chamber and Lord Peel's sub-Committee. I would only add that, on Committee number two, the officials should be both British and from the States.

Chairman: Paragraph 48, please.

Paragraph 49.

Dr. Ambedkar: I should like to say that the Committee should also consider the necessity of endowing the Central Government with powers to finance itself in emergency matters directly and independently, rather than be dependent upon contributions from the Provinces and States.

Lord Peel: All these points, of course, were considered from every point of view, and this was the result of a compromise between the different views. That is really all I can say on it at the present moment, I think.

Mr. Joshi: Lord Chancellor, I agree with Dr. Ambedkar's view.

Dr. Ambedkar: Lord Chancellor, I should also like to say that the fact-finding Committee, in apportioning the burden of the Federal Legislature between British Provinces and Indian States, ought to consider the principle of equity of contribution as between the two.

Chairman: Lord Peel no doubt will consider that. I wish you would mention that again, if you would not mind, when we come to the full Conference.

Sir Mirza Ismail: With reference to paragraph 49, (ii):—

> "The initial amount of the Contributions from the Provinces and the precise period within which these and the States' contributions are to be wiped out."

I must take exception to the States' contributions being placed on the same footing as those from the Provinces. My reasons are clear. In the first place, the cash contributions from the States—at any rate from many of them—are really in the nature of tributes, and, as is universally admitted, cannot have a place under the Federation. In the second place, the implication of the paragraph that such payments are made by all the States is, as the Committee is aware, entirely contrary to the fact. It is only comparatively few States that do so; and of the total charge, nearly 40 per cent. comes from a single State. As the principle of abolition is accepted in the Report, it seems to me quite unnecessary to make any reference on the subject to the proposed Committee. Why should we allow this differentiation to check the progress towards Federation, for the sake of a total which, after due deductions are made, will not perhaps amount to more than Rs. 50 lakhs? I therefore make a definite request to the Committee to settle this comparatively simple matter by a direct, instead of an indeterminate, decision—in other words, to agree to the abolition of these imposts.

Chairman: That will be a matter for the Committee. Would you like (ii) to be redrafted so as to make it quite clear that there is a difference between the Contributions of the Provinces and what are called the States' contributions—for them to be put into two separate paragraphs?

Sir Mirza Ismail: I take it that the States' contributions are included under paragraph 47, are they not?

Chairman: Yes, that is right.

Sir Mirza Ismail: I would suggest the entire omission of the reference to the States' contributions in this paragraph.

Lord Peel: To meet Sir Mirza's point, I think it could also be made clear, if it is split into two paragraphs, that the contribu-

tions are from certain States. You wanted that made clear, Sir Mirza?

Sir Mirza Ismail: Yes.

Sir Samuel Hoare: Will you put in a special sentence?

Chairman: I would simply break up (ii) into two parts:—

> "The initial amount of the Contributions from the Provinces and the precise period within which these are to be wiped out."

Then there would be the precise period in which the States' tribute, or whatever it is called, would be wiped out.

Sir Samuel Hoare: I should have said another sentence at the end: "Special cases" or "the cases of contributions from certain States should be considered in the same connection", or something of that sort.

Sir Mirza Ismail: That is going to be done in connection with paragraph 47 by the second Committee. This matter will have to be settled before the Federation comes into operation.

Chairman: We will make it clear that it is a contribution from certain States only.

Mr. Iyengar: Lord Chancellor, Perhaps the point could be brought out in this way. The two things are different. We should say: "The initial amount of the Contributions, if any, from the Provinces"—because they may make such a scheme as will avoid the payment of Contributions. The second is the question of the abolition of the States' contribution.

Sir Provash Chunder Mitter: I have an observation to make with regard to sub-paragraph (i) of paragraph 49. The first item on page 6, paragraph 10, of the Report of Lord Peel's sub-Committee is with regard to External Customs including Export duties. I have submitted a Note on export duties on jute. I have since consulted the Bengal Delegates, and their opinion is that Export duties ought to be excluded. Their opinion, further, is that Bengal has no use for any form of government if over 90 per cent. of the Export duties have to be contributed by Bengal alone. The Jute duties contribution from Bengal represent over 90 per cent. of the total Export duties. Not only is there this Export duty on jute, but about Rs. $2\frac{1}{2}$ crores is contributed by Bengal as Income-tax on jute business, besides other Income-tax from other sources. To the Income-tax we cannot object; but all the members of the Bengal Delegation are unanimous in the view that, if the majority of the members here insist on this, then we have no use for any kind of constitution, for the simple reason that Bengal cannot function. Those who try to follow the real position of Bengal will have no difficulty in coming to the conclusion that we are heading towards a very difficult state of things in that Province.

(The Committee adjourned at 3-55 p.m.)

PROCEEDINGS OF THE FORTY-FIFTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE, HELD ON THE 4TH NOVEMBER, 1931, AT 11-0 A.M.

DISCUSSION ON THE DRAFT THIRD REPORT (*concluded*).

Chairman: Your Highnesses and Gentlemen, We now have to consider the draft Report with regard to the Federal Court. I do not think it will occupy your time for very long. I propose to do what I did with regard to the other Report, namely, to read it through, and then to take each paragraph.

(*The Chairman then read paragraphs 52-66 of the draft Third Report.*)*

52. ***The Federal Court.***—**The necessity for the establishment** of a Federal Court was common ground among all members of the Committee, and such differences of opinion as manifested themselves were concerned for the most part with matters of detail rather than of principle. It was recognised by all that a Federal Court was required both to interpret the constitution and to safeguard it, to prevent encroachment by one federal organ upon the sphere of another, and to guarantee the integrity of the compact between the various federating Units out of which the Federation itself has sprung.

53. The first question which the Committee considered was the nature of the Court's jurisdiction, and it was generally agreed that this jurisdiction must be both original and appellate.

54. The Court ought, in the opinion of the Committee, to have an exclusive original jurisdiction in the case of disputes arising between the Federation and a State or a Province, or between two States, two Provinces, or a State and a Province. The Committee are of opinion that disputes between Units of the Federation could not appropriately be brought before the High Court of any one of them, and that a jurisdiction of this kind ought rather to be entrusted to a tribunal which is an organ of the Federation as a whole. It would seem to follow that the Court should have seisin of justiciable disputes of every kind between the Federation and a Province or between two Provinces and not only disputes of a strictly constitutional nature, but that in the case of disputes between the Federal Government and a State, between a State and a Province, or between two States, the dispute must necessarily be one arising in the federal sphere, since otherwise the jurisdiction would extend beyond the limits of the Treaties of cession which the States will have made with the Crown before entering the Federation. The Committee are disposed to think that decisions by the Court given in the exercise of this original jurisdiction should ordinarily be appealable to a Full Bench of the Court.

* These paragraphs, as amended in consequence of the ensuing discussion, are printed as paragraphs 52—66 of the Third Report of the Federal Structure Committee, *see pages* 943—949.

55. In the case of disputes arising between a private person and the Federation or one of the federal Units the Committee see no reason why these should not come in the first instance before the appropriate Provincial or State Court, with an ultimate right of appeal to the Federal Court, since it would obviously be oppressive to compel a private citizen who had a grievance, however small, against, say, his Provincial Government, to resort exclusively to Delhi, or wherever the seat of the Federal Court may be, for the purpose of obtaining justice. In this case also, however, whatever right of suit against a State in its own Courts is accorded to a citizen of that State, must even in a dispute arising in the federal sphere, be regulated by the laws of that State, though the citizen who is given a right of suit by the State law could not be deprived of his right of access to the Federal Court by way of appeal, whatever form that appeal may take. In this connection the Committee draw attention to the need of investing both Provinces and States with a juristic personality, for the purpose of enabling them to become parties to litigation in their own right. The Committee understand that at the present time no action lies against a Province of British India as such, and that no action can be brought against an Indian Prince in a British Indian Court save under very special conditions. On the other hand, the Committee are informed that in some of the States provision has already been made whereby proceedings can be taken against the State in its corporate capacity as distinguished from the ruler of the State himself. This subject will require to be further examined.

56. The Federal Court ought also, in the opinion of the Committee, to have an exclusive appellate jurisdiction from every High Court, and from the final Court in every State, in all matters in which a question of the interpretation of the constitution (using that expression in its broadest sense) is involved. A certain difference of opinion on questions of method has, however, to be recorded. The suggestion was made that some plan might be devised whereby anyone desiring to challenge the constitutional validity of a law passed by the Federal or a Provincial Legislature could obtain a legal decision on the matter at an early date after the passing of the Act, and that this might be done by means of a declaratory suit to which some public officer would for obvious reasons be a necessary party. The advantages of some such procedure are manifest, and the subject deserves further examination. Assuming, however, that legal proceedings of this kind are found possible, the Committee think it right that they should be confined to the Federal Court alone, at any rate where the validity of a Federal law is in issue, though there was a difference of opinion upon the question whether in the case of a Provincial or State law the proceedings might not be permitted in the first instance in the appropriate High Court or State Court. Where, however, a constitutional issue emerges in the course of any ordinary litigation the tribunal which may have seisin of the case should have jurisdiction to decide it, subject always to an ultimate right

of appeal from the State Court or High Court (if the case gets so far) to the Federal Court.

57. The form which the appeal should take might be left to be dealt with by Rules of Court, but, whatever form or forms are adopted, the Committee are clearly of opinion that there must be an ultimate appeal as of right to the Federal Court on any constitutional issue. Their attention was drawn to a very convenient procedure at present existing in British India whereby, when a question of title is raised in a Revenue Court, a Case can be stated on that point only for the opinion of the Civil Court, proceedings in the Revenue Court being suspended until the decision of the Civil Court is given; and they think that the possibility of adopting a procedure of this kind might well be explored. They understand in particular that a procedure on these lines would be the procedure most acceptable to the States. The Committee are however impressed with the need for discouraging excessive litigation, and recommend therefore that no appeal should lie to the Federal Court, unless the constitutional point in issue has been clearly raised in the Court below.

58. The suggestion that the Federal Court should for federal purposes be invested with some kind of advisory jurisdiction such as that conferred on the Privy Council by Section 4 of the Judicial Committee Act, 1833, met with general approval, and the Committee adopt the suggestion subject to certain conditions. In the first place they are clear that the right to refer matters to the Court for an advisory opinion must be vested exclusively in the Governor-General, acting no doubt in the normal case on his Ministers' advice; and secondly, they think that no question relating to a State ought to be referred without the consent of that State.

59. The Committee are of opinion that an appeal should not lie from the Federal Court to the Privy Council, except by leave of the Court itself, though the right of any person to petition the Crown for special leave to appeal, and the right of the Crown to grant such leave would, of course, be preserved. There would therefore be no right of appeal to the Privy Council direct from a High Court in any case where an appeal lay to the Federal Court. The Committee desire to emphasise here, in order to prevent any misunderstanding, that any right of appeal from the State Courts to the Federal Court and thence to the Privy Council in constitutional matters will be founded upon the consent of the Princes themselves, as expressed in the Treaties of cession into which they will enter with the Crown as a condition precedent to their entry into the Federation. There can be no question of any assumption by Parliament or by the Crown of the right to subject the States to an appellate jurisdiction otherwise than with their full consent and approval.

60. It will be necessary to provide that Federal, State and Provincial authorities shall accept judgments of the Court as binding upon themselves when they are parties to a dispute before

it, and will also enforce the judgments of the Court within their respective territories. It will also be necessary to provide that every Provincial and State Court shall recognise as binding upon it all judgments of the Federal Court.

61. The Committee think that the Court should be created, and its composition and jurisdiction defined, by the Constitution Act itself. They are of opinion that it should consist of a Chief Justice and a fixed maximum number of puisne Judges, who would be appointed by the Crown, would hold office during good behaviour, would retire at the age of 65, and would be removable before that age only on an address passed by both Houses of the Legislature, and moved with the fiat of the Federal Advocate General. The question of the salaries and pensions of the Judges is a delicate one. The Committee are clear that the salaries, at whatever figure they may be fixed, should be non-votable and incapable of reduction during a Judge's term of office, and it would be a convenience if the salaries could be fixed by the Constitution Act, or in accordance with some machinery provided by that Act. The Committee have no desire to suggest any extravagant figure, but they are bound to face facts, and they realise that in the absence of adequate salaries it is in the highest degree unlikely that the Federation will ever secure the services of Judges of the standing and quality required. They suggest that the matter might be referred to a small committee for investigation and report at a reasonably early date. With regard to the qualifications of the Federal Court Judges, the Committee suggest that any barrister or advocate of 15 years standing and any person who has been a Judge of a High Court or State Court for not less than three years should be eligible for appointment.

62. The seat of the Court should be at Delhi, but power should be given to the Chief Justice, with the consent of the Governor-General, to appoint other places for the sittings of the Court as occasion may require. The Court must also have power to make Rules of Court regulating its procedure. These rules should, after approval by the Governor-General have statutory force. The power to regulate the procedure of the Court should include a power to make rules enabling the Court to sit in more than one division, if necessary. The appointment of the staff of the Court should be vested in the Chief Justice, acting on the advice of the Public Services Commission, but the number and salaries of the staff must of course be subject to the prior approval of the Governor-General.

63. A strong opinion was expressed in the Committee that the time had come for the creation of a Supreme Court for British India to which an appeal should lie from all Provincial High Courts in substitution for a direct appeal to the Privy Council. Appeals from the Court would lie to the Privy Council only with the leave of the Court or by special leave. The creation of such a Court is in the natural course of evolution and the Committee adopt the suggestion in principle. A difference of opinion, how-

ever, manifested itself on the method whereby such a Court should be brought into existence. There was a strong body of opinion amongst the British Indian Delegates to the effect that the Federal Court should be invested with this further jurisdiction, the proposal being that the Court should sit in two divisions—one dealing with Federal matters and the other with appeals on all other matters from the Provincial High Courts. Other members of the Committee, and generally speaking the States' representatives dissented from this view, and were of the opinion that there should be a separate Supreme Court for British India on the ground that the Federal Court would be an all-India Court, while the Supreme Court's jurisdiction would be confined to British India; the mass of work with which it would have to cope would obscure its true functions as a Federal Court, and to that extent detract from its position and dignity as a Federal organ. It is no doubt the case that many more appeals would be taken to a Supreme Court situate in India than are at present taken to the Privy Council, and the Committee appreciate the force of this objection. But there would be no difficulty in reducing the appeals to a reasonable number by imposing more stringent restrictions upon the right of appeal. The Committee would deprecate the imposition on the finances of India of the cost of two separate Courts if this can possibly be avoided, and cannot disregard the possibility of conflicts between them. There is lastly at no time in any country a superfluity of the highest judicial talent, and the truer policy appears to them to be to concentrate rather than to dissipate judicial strength.

64. A question of very real difficulty remains to be considered, *viz.*, whether the Constitution Act itself should establish a Supreme Court now or whether power should be given to the Federal legislature to establish it either as a separate institution, or by conferring general appellate jurisdiction on the Federal Court as and when it may think proper so to do. The Committee are impressed with the need for proceeding cautiously in this matter, but it was urged on them that the opportunity should not be lost of settling once and for all the general outlines of a Supreme Court scheme. The establishment of a Supreme Court, and the definition of appellate jurisdiction are, they think, essentially matters for the Constitution Act, and it appears to them that in the circumstances it may be advisable to take a middle course. They recommend therefore that the Constitution Act should prescribe the jurisdiction and functions of the Supreme Court and that the Federal Legislature should be given the power to adopt these provisions of the Constitution Act in the future, if it should think fit to do so. The Committee recommend this method on several grounds. In the first place, the establishment of the Court would in any event require a large increase in the judiciary and in their view it should be left to the Federal Legislature of the future to decide whether the additional expense should be incurred or not. Secondly, the whole subject is one which requires much expert examination and it may be desirable that

experience should first be gained in the working of the Federal Court in its more restricted jurisdiction. Thirdly, the functions of the Federal Court will be of such great importance, especially in the early days of the Federation, that in the opinion of the Committee it would be unwise to run the risk of either overburdening it prematurely with work, or of weakening its position by setting up in another sphere a Court which might be regarded as a rival.

65. A proposal to invest the Supreme Court above described with jurisdiction to act as a Court of Criminal Appeal for the whole of British India also found a certain measure of support. It is clear that even if a right of appeal to this Court in the graver criminal cases were given, the work of the Court, and therefore the number of Judges would be enormously increased. The Committee had not the time at their disposal to enter into a close examination of the question whether in principle a Court of Criminal Appeal for the whole of British India is desirable, and they do not feel themselves able to express any opinion upon the matter, though they recognise its great importance. For the same reason that they have found themselves unable to recommend the immediate establishment by the constitution itself of a Supreme Court for appeals in civil matters from the High Courts of British India, they are unable to recommend the immediate establishment of a Court of Criminal Appeal. This matter is one which, in their opinion, must be left to the future Federal Legislature to consider, and if that Legislature should be of opinion that such a Court is required there will be no difficulty, if it should be thought desirable, in investing the Federal Court, or the separate Supreme Court, as the case may be, with the necessary additional jurisdiction. But the Committee cannot refrain from a word of warning. It appears to them probable that a Court invested with the various jurisdictions which were suggested in the course of the Committee's discussions would have to consist of probably as many as twenty or thirty Judges, and in all likelihood of many more. To create an entirely new Bench of this size would strain the judicial resources of any country, and it can scarcely be expected that the result would be satisfactory. The Committee are therefore strongly of opinion that one step only should be taken at a time and that experience should be gradually accumulated. They are anxious that the Court should have as great a prestige and dignity as it is possible to give it; but they are apprehensive of the grave risks which in their opinion would be run if it were set a task at the outset of its career which, through no fault of its own, might prove to be beyond its capacity.

66. The subject of the Provincial High Courts in British India was also touched upon in the course of the Committee's discussions, and they think it right to record their views on one or two points of importance connected with this subject. In the first place, the Committee are of opinion that High Court Judges should continue to be appointed by the Crown. Secondly, they think that the

existing law which requires certain proportions of each High Court Bench to be barristers or members of the Indian Civil Service should cease to have effect, though they would maintain the existing qualifications for appointment to the Bench; and they recommend that the office of Chief Justice should be thrown open to any puisne Judge or any person qualified to be appointed a puisne Judge. The practice of appointing temporary additional Judges ought, in the opinion of the Committee, to be discontinued.

Chairman: Now, that is the Report on which I want your comments. Will you kindly go back now to paragraph 52?

Dr. Ambedkar: May I just say this with regard to paragraph 52? Your Lordship will remember that, while we were discussing the jurisdiction of the Federal Court, I raised the point that the Court, besides having the jurisdiction to interpret the constitution and to see that neither the Provincial Governments nor the Federal Government intervene in the sphere of the other, should also have the jurisdiction to deal with matters arising out of the fundamental rights or the minority rights. I think I was supported in that also by Mr. Jayakar, and also, if I am right, by Mr. Sastri. Perhaps a note might be made to that effect in this paragraph.

Chairman: I am obliged to Dr. Ambedkar, but I am happy to be able to reassure him in this way—that when they are in the constitution, they will naturally fall within the domain of the Federal Court's interpretation.

Mr. Jayakar: That is included in the word " constitutional ".

Chairman: Now paragraph 54.

Mr. Gandhi: There is a reference to " treaties of cession ". I do not know whether Sir Samuel Hoare can give any information on this. Will these treaties be secret treaties or open treaties?

Sir Samuel Hoare: Lord Reading says that he thinks there are no private treaties of any kind.

Sir Tej Bahadur Sapru: That is so.

Mr. Gandhi: But will the new treaties all be public?

Lord Reading: I think, in a matter of this character, when you are dealing with rights which have to be ceded, that those who are interested in the constitution, and who are framing it, and who are taking part in it, and who are co-operating with it, must know what the treaty obligations are between the States and the Government of India.

Chairman: Now paragraph 55.

Sir Akbar Hydari: I am not quite clear about paragraph 55. You are referring to disputes arising between a private person and the Federation, and your language is this. It simply states, in very general terms, that:—

> " In the case of disputes arising between a private person and the Federation or one of the federal Units, the Committee see no reason why these should not come in the first

> instance before the appropriate Provincial or State Court, with an ultimate right of appeal to the Federal Court, since it would obviously be oppressive to compel a private citizen who had a grievance, however small,"

there, again, it is very general. It does not say a grievance arising out of a federal matter, but—

> " a grievance, however small, against his Provincial Government, to resort exclusively to Delhi, or wherever the seat of the Federal Court may be, for the purpose of obtaining justice. In this case also, however, whatever right of suit against a State in its own Courts is accorded to a citizen of that State, must, even in a dispute arising in the federal sphere, be regulated by the laws of that State,"

and so on.

So the wording is such that, in the first instance, even although it does not arise in the Federal sphere, nevertheless if it is a suit of a private person against a federating Unit, he has got the right of ultimate appeal to the Federal Court.

Chairman: I think we had better make it absolutely clear, because I see what you mean with regard to those words—they might give a right of appeal in a perfectly domestic matter.

Sir Akbar Hydari: With regard to disputes arising in the Federal sphere, I should like one or two points to be made clear to me. You will remember, Lord Chancellor, that, when we were discussing which subjects should be Federal, we said that certain subjects should be Federal for policy and legislation, but not for administration. If there was a dispute which arose out of the administration of such a subject, would that be a matter arising in the Federal sphere?

Chairman: I should like to think that over; it is a very general point. I see what you mean—what you say is in effect this—the administration is your concern, and therefore you want to be clear about an appeal on administration.

Sir Samuel Hoare: You wish that there should be no appeal on administration?

Sir Akbar Hydari: Yes.

Lord Reading: That is a matter of importance if you are going to deal with matters in the Federal sphere, because if it is a matter of administration in the Federal sphere it is going rather far to say that there should be no appeal to the Federal Court, is it not? I do not want to pronounce a definite opinion on the matter hurriedly, but I understood from this that, in the case of anything which affected Federal matters, there would be right of appeal. As I understand the basis of this paragraph, it is this; you do not want to force everybody in India to have to go to Delhi, or wherever the seat of the Federal Supreme Court may be, in order to originate his complaint. What you are wanting to do is to give everybody in the Provinces or the States a right to begin a suit within his

own State. So long as it relates to a matter in the Federal sphere, he can begin it in his own State instead of having to go to Delhi; but then he has a right of appeal. And that would apply, I should think, as much to administration as to anything else.

Sir Akbar Hydari: The case to which I am referring is where the administration is non-Federal, and I am thinking of what would happen in a case arising in regard to such administration—that is my point.

Lord Reading: I see what you mean. If it has nothing to do with administration in the Federal sphere, there is no reason why he should have the right of appeal to the Federal Court. He has not had a right of appeal hitherto except to his own State. That must be right.

Chairman: We will see that is made clear. Have you any other point on that, Sir Akbar?

Sir Akbar Hydari: I do not think I have anything further to say.

Chairman: I hope you will not consider it an impertinence for me to congratulate you, as the representative of Hyderabad, on the very interesting and pleasing announcement we have seen in the "Times" to day.

Sir Akbar Hydari: Thank you, Sir.

Mr. Jinnah: 54 and 55 are more or less inter-connected. Paragraph 54 lays down what will be vested in the Federal Court. The first thing that the Report says is this, that it will have jurisdiction over matters strictly of constitutional nature. That is one. Well, that I can understand. Any matter of strictly constitutional nature will be vested in the Federal Court, and arising between the Federation and a Province, or a Unit, or between two Units. Then the Report proceeds further:—

> ".....but that, in the case of disputes between the Federal Government and a State, between a State and a Province, or between two States, the dispute must necessarily be one arising in the Federal sphere."

Now, I do not understand what those disputes will be. It is too vague and too general. My submission is that you must specify what are those disputes which are likely to arise in the Federal sphere. It conveys no idea to me.

Chairman: I follow what you mean. Of course, you and I would agree that it is very difficult to put down a category of things now, because, however prophetic you are and however clever you are, something always turns up which you ought to have put in, but which is not put in. So that what we have rather meant to do is to leave it as general as possible at present. Later on it may be that your point will have to be very carefully considered. All I can say is that, at the present moment, I am not prophet enough to put it in. I am sure you follow my point?

Mr. Jinnah: I do.

Chairman: You are a better prophet than I am; perhaps you will make a suggestion.

Mr. Jinnah: I have never pretended to be a prophet—I am a humdrum ordinary person. And therefore I want to see what I am agreeing to As to the first part, there is no difficulty; any constitutional matter—a matter arising out of the constitution or relating to the constitution—I can understand that. But when you say it will have jurisdiction with regard to matters arising in the Federal sphere, I do not understand it. Therefore, I would ask you please, to make a note that those Federal spheres must be properly defined; and that should not include Federal laws.

Now, as to the next point which Sir Akbar Hydari raised on paragraph 55—in the case of disputes arising between private persons—here we are concerned with private persons and the Federation or Units. Here again, you only say disputes. What kind of disputes? They must be specified or defined.

Then, with regard to paragraph 55, further, I do not agree with the jurisdiction being given to the Courts of the Provinces or the Units with regard to any question that arises out of or relates to the constitution. It must be decided by the Federal Court.

Chairman: Will you say that again?

Mr. Jinnah: I will say that disputes that may arise between a subject and a State, relating to the constitution or arising out of or under the constitution, must be decided by the Federal Court and not the Provincial Courts. I think it would be very dangerous to do otherwise. It is said here that you will put the parties to a great deal of inconvenience and expense, although the matter may be a very small one. Well, Sir, I conceive this that if there is a dispute between the Units relating to the constitution or arising out of the constitution, or between the Federation and the Units, then the Federal Court will have exclusive jurisdiction; but if the question arises between a subject and a State or the Federation, then you relegate it to an ordinary Provincial Court. It would not be a small matter if the question related to the constitution or arose out of the constitution. It would be a suit of a representative character; and if the parties were determined to press their contention then would you relegate them to an ordinary District Court or a District Judge, appeal against that decision to the High Court and then appeal to the Federal Court? Or would you say that, if it happened to be in the Presidency towns, the dispute must first go to a single Judge, then an appeal to the Division Bench and then to the Federal Court? Would that be less expensive? Further, I say that you must make no distinction between a subject and a State, or a State and a State, or the Federation and a State, because as regards the questions that will arise we are strictly confining ourselves to the constitution; and therefore I submit that it will be undesirable—because

our experience is this, Sir, that when you have got a highest Court vested with jurisdiction of an appellate character, the litigants will never be satisfied until they have got the decision of that final Court.

Chairman: I agree with everything you have said except the last sentence, and I want just to put this view before you, if I may. Very often people may be in two positions. The first position is this—it is not a very complimentary one to the Judges; the second is a complimentary one. I will put the uncomplimentary one first. Very often people say, "Now, there is some point between us, and all we care for is a decision; it does not very much matter which way the decision is, because what we want to get is a decision, and everybody will be perfectly satisfied with the decision of the Judge." I have known that pretty often, especially in Company matters; but we will not trouble about that. Now let us put the case which is complimentary to the Judges. Supposing two people have a dispute, and the Judge decides it in such a way that both of them say, "Well, that decision is absolutely right." Very often a Judge is right, you know, because he is not prejudiced. One party says, "Oh, I think A is right," and the other party says, "I think B's interpretation is right," and then they get a really first class Judge, and they say, "The Judge is right; after all, he sees the whole thing"—and they do not want to appeal. I am only putting for your consideration whether it is not possible to allow, at any rate, these local things to go first to a lower Court for those two reasons—the one because people want a decision and they do not much care what the decision is—because they have got to have a decision—and the other thing is that the judgment may appeal in such a way to both of them that neither of them wants to go farther.

Mr. Jinnah: I see your argument, Sir, but here the only distinction I make is this, that this litigation which will be relating to the constitution or arising out of the constitution will be not of an ordinary character—not like matters arising under the Companies Acts and so on. The people will not raise the point unless there is a grave objection to it. Remember, they are dealing with the constitution; they are not dealing with ordinary disputes like the Companies Acts or the Contract Act, and so on. If you had a particular party—we will say here we are dealing with subjects; you can see it in the case of States and Provinces, of course—why should that not be done in the lower Courts? Why not? I see the force of it, because this is such a grave issue. The issue that will be raised will be a grave one—that there is a breach or a fundamental infringement of a fundamental right under the constitution. Well, a question of that character should not be left to a local tribunal, and if you do leave it, let me tell you, Lord Chancellor—you, of course, have very great experience of your Courts, as I have some experience of my Courts—that although I agree with you that the Judges always try to decide right, you must remember that one party thinks always that the decision is

wrong—at least one party thinks so. And, in a matter of this character, you only compel them to go through the whole range of these Courts, and ultimately the Federal Court will have to decide.

Chairman: I am very much obliged to you for raising the point, because it does need very careful consideration, and it must have careful consideration before the Bill is drawn up. The only point I would like to ask Mr. Jinnah, if he would kindly help me with regard to it, is this. Can you imagine a case—I am only talking about our own country—where the parties ought to be able to say, " Well, we do not want to fight this case before the Judge of first instance, and as for the Court of Appeal, we do not want to go before it; this is so important, let us go to the House of Lords at once "?

Mr. Jinnah: Oh yes, I do. There are cases where the practice will not be satisfied until there is a decision of the final Court.

Chairman: The last point I want to worry you about now is this. In the instance I have just put to you, you said, " Well, I would very much like in England not to go before the King's Bench Division and not to go before the Court of Appeal, but to go straight to the House of Lords, because that is where my last haven is going to be." Would you have witnesses before the House of Lords? Is the House of Lords to find the facts or is the Court of first instance to find them?

Mr. Jinnah: We are contemplating here that a Federal Court will sit as an original Court with a single Judge. The single Judge of the Federal Court will deal with a case—where there is a case—on the evidence; and then will come the Appeal Court. You are contemplating that here.

Lord Reading: May I make one observation with reference to Mr. Jinnah's remarks—not for the purpose of continuing the argument but in order that it should be kept well in mind when the draughtsman or the drafting committee sets to work to draw up the clauses with relation to this Act. What is of the utmost importance, I submit, is that you do not want to add to the multiplicity of law suits in India, with their enormous expenditure of time and money in every direction. The great danger that I see is this—and I only throw it out as a thought which will have to be considered when you come to the matter—if you were to confine the proceedings relating to constitutional matters solely to the Federal Court (and I speak with some experience, in the past at any rate, of the ingenuity of lawyers in finding devices by which they can, in the interest of their clients, postpone a decision which otherwise had to be given), I look with some horror upon the prospect of a man in a Provincial Court or in a State Court being able to say, as he would in one eventuality which was put to him, " Ah, this raises a constitutional point. It may be rather remote, but it is a constitutional point. You have no jurisdiction. This must, therefore, go to the Federal Court. There must be an adjournment

for the purpose." And then you get all the difficulties of that. Instead of which, by the other course—the course proposed—it is left open to the Court there to decide the point if it arises in that way, with a right of appeal to the Federal Court which is specially charged with Federal matters. I think it is most important to bear that in mind. Certainly, from my experience of watching, but taking no part in, proceedings in India, I do think that you must be most careful not to give further opportunities of delay and unnecessary expenditure.

Mr. Joshi: I want to know, Lord Chancellor, what was the fianl interpretation on the point raised by Sir Akbar Hydari, whether there is to be an appeal in those suits which concern the administration of Federal matters. For instance, there may be a suit by a private person with regard to the administration of railways, which may be administered by a State, but the policy and the laws may be passed by the Federation. With regard to such a suit, I want to know whether there will be an appeal to the Federal Court or not.

Chairman: I am not sure that I have followed your point correctly. Are you taking the case, for instance, of a suit in Hyderabad with regard to the administration of the railways?

Mr. Joshi: Yes.

Chairman: Could you give me a rather more concrete example than that?

Mr. Joshi: Yes, a suit for recovering damages for an injury received by a man in a railway train.

Chairman: I doubt whether that is the administration of the Federal Constitution.

Sir Tej Bahadur Sapru: That is a purely judicable matter and does not affect Federal administration. My Lord, there is one point which arises out of the remarks which Mr. Jinnah has made to-day, which I should like to have cleared up. He asked Your Lordship to see to it that the word "dispute" in paragraph 54 was carefully defined, and at the same time he added that, whatever might be the definition that you give, it must not include Federal laws. Now, I want to understand clearly what he means by saying that it must not include Federal laws. The expression "Federal laws" may, to my mind, mean anything or nothing. Until we know exactly what he means by saying that the dispute must not include Federal laws, I cannot agree to the proposition in that form. That is one remark which I have got to make.

The only other remark I wish to make is that I think paragraphs 54 and 55 lay down, if I may respectfully say so, a perfectly sound principle. There is, to my mind, a vital difference between a dispute arising between one State and another State, or between one Province and another Province, and a dispute arising between a private individual and a State. It is, to my mind, very hard to bring a man all the way to Delhi to try a suit on the original

side when the matter at stake may be only Rs. 500, or even only Rs. 20. If I may respectfully say so, I entirely endorse the remarks which have fallen to-day from Lord Reading; and therefore I say that, so far as paragraphs 54 and 55 are concerned, I would not amend them in any degree or in any respect, except to clear up the point raised by Sir Akbar Hydari.

Sir Maneckjee Dadabhoy: I should like to enlarge on the first point raised by Sir Tej Bahadur Sapru, and to know from Mr. Jinnah whether, if there was a dispute with regard to the interpretation of a Federal law, that would be within the jurisdiction or not.

Mr. Jinnah: It seems to me there is a great deal of confusion in the minds of the last two speakers, although I explained the point at great length in my speech. Federal laws would be the laws enacted by the Federal Legislature—any Statute. And further, I explained that, in regard to the Federal subjects with which we have already dealt, you have made certain subjects Federal subjects, such as company law, commercial law and banking law. You have got the railways—for policy and legislation railways are Federal. Take the Railway Act. Certainly, it is quite clear what I mean by Federal laws. Supposing, when any of those laws are put into operation, after your Federation has come into being—it may be between the State and a subject, it may be between two individuals—a dispute arises out of these laws. Who is to decide that? Not the Federal Court. It must be decided by the Local Courts. That is what I mean by Federal laws.

Chairman: Does that explain it, Sir Tej?

Sir Tej Bahadur Sapru: I am not satisfied with regard to that. There is nothing new in this explanation, My Lord; but I do not want to carry on the discussion. It will have to be reduced to a legal proposition.

Chairman: I follow the point on both sides. It is a nice point and we shall have to come to a decision when we draw us the Act.

Now paragraph 56. I think that is very formal. If you will turn now to page 4, that is the form of the appeal.

Paragraph 57—Rules of Court. I do not think you need trouble about that.

Sir Tej Bahadur Sapru: With regard to page 4, I should like to draw the attention of Sir Akbar Hydari to this, as he is very keen on the procedure which is suggested there.

Chairman: Yes. Sir Akbar, paragraph 57 is on the question of procedure. I think that is your suggestion, is it not?

Pandit M. M. Malaviya: In the last sentence in paragraph 57 it says:—

> "The Committee are, however, impressed with the need for discouraging excessive litigation, and recommend there-

fore that no appeal should lie to the Federal Court, unless the constitutional point in issue has been clearly raised in the Court below."

That is restricting it too much, My Lord. The constitutional point in issue may not have been raised in the Court below; but if it is a good constitutional point, it should be open to the litigant to have it dealt with in the Federal Court.

Chairman: With regard to that, I quite appreciate your point. It is one which has agitated lawyers, I should think, for the last 150 years. The answer to it has generally been this: First, the question of expense—you ought not to be able to raise in an Upper Court points that you have not taken in the Lower Court. We have the same sort of rule in the Court of Appeal here, of which I was a member for a good long time. Another suggestion made is this, that very often, when you raise a point in the Court of Appeal for the first time, it may turn out that before the Court could adjudicate on that point, it would have to have certain facts found, and then the case has to be remitted. There are very good arguments both ways. Some people say it is six one way and half a dozen the other way; but I think on the whole, if you will permit me to say so, there is a slight balance in favour of this. I am not saying it is absolute justice. It is one of these points where you perhaps do not get absolute justice. May I just put it in this way? You will forgive me for arguing from England. Supposing a man here has a case in the County Court and has got a first-class point of law which we call a " sitter "—he ought to win. He does not take that point. Then he appeals to the Divisional Court of the King's Bench, and he does not take the point. Then he appeals to the Court of Appeal and does not take it. By that time the costs have gone up to an awful amount. Then he goes to the House of Lords and for the first time says: " Look here, I have got a point which is absolutely in my favour. I did not take it in the Court of first instance; I did not take in the first Court of Appeal or the second Court of Appeal." On the whole, the sort of view is that he ought not to be allowed to take it now. As a matter of abstract justice you are probably right, but the argument *ab convenienti* is against it. We will bear in mind what you say. On the whole, I think, if one were, so to speak, to go back to the Genesis or Exodus, or whatever you do go back to, one would assent to your view; but we have found on the whole, by balancing the pros and cons, that this is the better of the two systems, though I agree with you that as an abstract matter there is nothing to be said against your logical position.

Mr. Zafrullah Khan: Even if this procedure were not laid down here, I should think the ordinary procedure governing any Court would rule out any point which had not been raised below.

Chairman: Now, No. 58, please.

Dr. Shafa'at Ahmad Khan : May I draw your attention to the second paragraph :—

> " In the first place, they are clear that the right to refer matters to the Court for an advisory opinion must be vested exclusively in the Governor-General, acting no doubt in the normal case on his Ministers' advice."

I suggest that this last phrase should be deleted—" acting no doubt in the normal case on his Ministers' advice." I think the hands of the Governor-General should not be tied by the advice of the Ministers. He may take the advice of other persons—the advice of representatives of the minorities and others. He will, of course, normally consult the Ministers; but he should not be bound down by the advice that the Ministers may give. He should be free to do what he thinks fit.

Sir Samuel Hoare : I am not quite clear. Supposing there was a minorities case, which I should think is probably the case you have in mind, would the Governor-General not normally take it to the Ministers?

Chairman : I think that is the reason why we put in the words " normal ".

Sir Tej Bahadur Sapru : That covers everything.

Chairman : You see, we are not legislating for the abnormal cases.

Sir Samuel Hoare : Can you not see the alternative, Dr. Shafa'at Ahmad? The Governor-General has got specific powers, or we assume that he has specific powers, in connection with minorities, and I think that would not be covered by the normal case. It would not be a normal case. A minorities case would be an abnormal case, so that in that case he would not have to take the advice of his Ministers. Is that your point?

Chairman : What we will do is, if we have not made it quite clear there, we will make it absolutely clear. We are in agreement with you. The only point between us is whether our words express what we want. Shall we cross it out altogether?

Mr. Jinnah : Yes.

Sir Tej Bahadur Sapru : My Lord, It must not be understood that, at any rate so far as I am concerned, I agree. It would be most unwise to do away with that word " normal ". I think the draft, as it stands, absolutely meets the point of view which has been urged by my friends on the other side, because the word " normal " implies that, in certain cases, you give a discretion to the Governor-General himself. But why should not the normal practice be followed?

Mr. Iyengar : Normally the Governor-General would consult his Ministers.

Mr. Jinnah : Would you refer to the Act of 1833 and see whether the King has got to act on the advice of his Ministers here? Of course not.

Chairman: Really the only point here is a drafting point. The question is how we ought to express our view. I must be wrong, because I see Sir Muhammad Shafi shakes his head. Anyway, we are agreed on this, as to what we want. The only point is whether this wording carries out what we all want.

Sir Muhammad Shafi: If I may venture to say so, it is not merely a drafting point. There is a great deal of substance in the point raised by my friend, Dr. Shafa'at Ahmad Khan. If I may venture to say so, you are not only defining but you are limiting the Governor-General's power if you interpose these words in the Statute; and it is undesirable, in view of the conditions obtaining in India, that the Governor-General's power in this respect should be limited. If I may venture to say so, it ought to be left to his discretion—the Governor-General's discretion—to take action in whatever cases he may think fit.

Sir Provash Chunder Mitter: Is it not left to his discretion as it is drafted?

Sir Muhammad Shafi: No; those words limit his discretion, limit his power.

Sir Maneckjee Dadabhoy: Normally he takes the advice of his Ministers.

Sir Muhammad Shafi: Oh, he will do that, even if there is no statutory provision of that kind embodied in the Act.

Mr. Jayakar: The words must be given their normal meaning. It is not " acting on his Ministers' advice." The words " in the normal case " have a distinct meaning, that this is the ordinary or normal procedure; but that does not bind the Governor-General in extraordinary cases or abnormal cases not to set aside the advice of his Ministers and act contrary to it. I submit, therefore, that the words " in the normal case " ought to remain there. It is the normal or ordinary procedure.

Sir Maneckjee Dadabhoy: And it will be for the Governor-General to decide whether it is normal or not normal. If the minorities have confidence in the Governor-General, then it ought not to affect them. If they have not got that confidence, then they will be affected in any event.

Chairman: Would you like to say " acting in abnormal cases on his own responsibility "? I think we appreciate what you mean. I agree it is not a drafting point. But we are all agreed that there must be cases where the Governor-General must take the responsibility himself. The only thing we want to do is to get this rather awkward phrase altered. Some people think it means what they want and other people think the opposite, but we can get it right. All we mean to say is that the Governor-General in some cases must act on his own responsibility and not on the responsibility of the Ministers. That is what it comes to. We will see that that is done.

Sir Akbar Hydari: Why not say " acting normally, though not necessarily "?

Mr. Jinnah: You know what my view is. It is that the Governor-General should not be given this power. However, that is a different question; but I do say that, if you are going to give him the power, then stick to the provisions of the Act itself which you are copying—the 1833 Act. If the King is at liberty to refer to the Privy Council any matter he may think proper, so the Governor-General should be at liberty to refer to the Federal Court any matter which he thinks it necessary to get an opinion upon.

Chairman: How about putting it " acting normally though not necessarily "?

Mr. Jinnah : I do not understand the object of it.

Chairman: The object of it is this—to get everybody into line. Then it means what we all want it to mean.

Mr. Jinnah: Then you can do what you like.

Mr. Gavin Jones: This is a very important matter for the minorities, and it would be far better if the words were deleted altogether.

Mr. Zafrullah Khan: The right to refer matters to the Court for an advisory opinion must be vested exclusively in the Governor-General. The rest is only a hope, and I do not think it is necessary to express that in the form of words.

Sir Muhammad Shafi: What we suggest is that these words should be deleted.

Chairman: Very well.

We will now pass to paragraph 59.

Mr. Gandhi : Would you add here that the Congress opinion is, or it is contended on behalf of the Congress, that the Federal Supreme Court should be the final Court of Appeal?

Chairman: " It was contended on behalf of the Congress that the Federal Supreme Court should be the final Court of Appeal."

Sir Samuel Hoare: I do not wish to be pedantic about it, but I should be a little sorry if we put that in. This is a Committee with members. If Mr. Gandhi likes to say that it is his opinion we can put it in that form.

Mr. Gandhi: I do not mind about that.

Sir Samuel Hoare : I do not go so far as to say that otherwise I have no objection, but I think it is a pity to put in something which does not emerge from this Committee.

Chairman: Shall we say " An opinion was expressed that "? We will put that in.

Are there are any remarks on paragraph 60?

Does anyone wish to raise anything on paragraph 61?

Sir Sultan Ahmed: There is one point I wish to mention on the last sentence, which is as follows:—

> "With regard to the qualifications of the Federal Court Judges, the Committee suggest that any barrister or advocate of 15 years' standing and any person who has been a Judge of a High Court or State Court for not less than three years should be eligible for appointment."

Is it any State Court? There has been a case in which an Inspector-General of Police in a certain State has been made a High Court Judge.

Chairman: We mean the highest Court of the State.

Dr. Shafa'at Ahmad Khan: Of *any* State?

Chairman: That wants consideration.

Sir Tej Bahadur Sapru: What I was going to suggest was that, even in the case of a Judge appointed from a State Court, we must insist on his possessing the same qualifications that Judges of the other High Courts or members of the Bar possess. I have known cases where Inspectors-General of Police have been appointed Judges of the High Court in Indian States and I know of one case where an Accountant-General was appointed a Judge of the High Court in an Indian State. I do not want an Accountant-General or an Inspector-General of Police to preside over the Federal Court.

Mr. Jayakar: May I suggest that, instead of saying "not less than three years" we should say "not less than five years"?

Chairman: Yes, I think we can accept that. What we can say is "or State Court, the qualifications being similar". I take it that is agreed.

Pandit M. M. Malaviya: I suggest we should say "not less than ten years".

Sir Provash Chunder Mitter: Ten years would be impossible. Often they are not appointed until they are 55.

Chairman: You will accept five years instead of three?

Mr. Jayakar: I suggest five years.

Pandit M. M. Malaviya: In paragraph 61 it says:—

> "it would be a convenience if the salaries could be fixed by the Constitution Act."

It is not usual to fix salaries in the constitution.

Chairman: We have got it in our Act that the Judges shall be paid £5,000 a year. I agree it is not usual. I think they have got it in the American Act, but I am not sure about that.

Sir Tej Bahadur Sapru: I would keep the Judges absolutely outside the vote of the Legislature.

Sir Sultan Ahmed: Certainly.

Pandit M. M. Malaviya : We cannot at present say what the scale of salaries will be under the new constitution of India for high offices generally, and to require that the salaries of the Judges should be fixed by the Constitution Act will be to pick out only one set of salaries from all the rest. Those salaries must have some relation to the other salaries which will be given to higher officials. That is the point.

Mr. Joshi : I agree with Pandit Malaviya that we should not have the salaries fixed by the constitution. The salaries of the Judges must bear some relation to the salaries paid to other officers. I think therefore we should omit this part of the Report.

Sir Tej Bahadur Sapru : My Lord, May I be permitted to point out that you have amply provided for a satisfactory solution of this difficulty in your Report, and I stand by it. The sentence which I am going to read is this:—

> " The Committee are clear that the salaries at whatever figure they may be fixed, should be non-votable,"—

That is a perfectly sound principle, if I may say so —

> " and incapable of reduction during a Judge's term of office,"—

That again is a very sound proposition;

> " and it would be a convenience if the salaries could be fixed by the Constitution Act, or in accordance with some machinery provided by that Act."

What that machinery will be has yet to be worked out. Possibly it will have to be discussed by the Committee which you propose in the very next sentence. I am most anxious that we should not play with the salaries of the Judges, because the whole of the constitution will rest upon the independence of the Judges. If we are going to play with their salaries year in and year out then I cannot really feel satisfied that any constitution, howsoever good it may be, will succeed. I do not think we ought to be so democratic as to bring the Judges under the control of the political Legislature. I have a very strong feeling on that matter.

Sir Muhammad Shafi : I entirely agree with my friend, Sir Tej Bahadur Sapru.

Mr. Joshi : My Lord, I merely suggest we should omit this part—

> " it would be a convenience if the salaries could be fixed by the Constitution Act."

Sir Tej Bahadur Sapru : But then it goes on to say—

> " or in accordance with some machinery provided by that Act."

Mr. Joshi : I am suggesting that we should preserve the words—

> " in accordance with some machinery provided by that Act."

Sir Tej Bahadur Sapru: That is covered by the first phrase which you want to take out.

Mr. Joshi: We should leave it free for the salaries to be fixed by that machinery.

Sir Maneckjee Dadabhoy: No; we do not want to leave it free; we do not want to leave it to the Legislature to settle it.

Mr. Iyengar: It says that they should be incapable of reduction during the Judge's term of Office; so that you are contemplating the right to change the salaries, but not during the term that a Judge is drawing the salary.

Mr. Joshi: If you once fix the salaries by Act of Parliament, I doubt whether you can reduce the salaries.

Sir Sultan Ahmed: In the next sentence it says:—

> "They suggest that the matter might be referred to a small committee for investigation and report at a reasonably early date."

All that is clear.

Mr. Zafrullah Khan: It would be a convenience if it were fixed by the constitution.

Mr. Joshi: No; on the contrary it would be an inconvenience.

Chairman: I think we must here rather appeal to experience. The salaries of English Judges have been fixed by statute for nearly 100 years, and I assure you no harm has been done by it.

Mr. Joshi: Your Parliament is a supreme legislative body. The Indian Federal Legislature will not be a supreme legislative body; it will have to go to the British Parliament.

Sir Sultan Ahmed: No; in its own sphere it is a sovereign legislature. I think these salaries should be fixed.

Sir Tej Bahadur Sapru: The salaries should be fixed.

Sir Muhammad Shafi: Mr. Joshi forgets that the constitution is to be framed by the British Parliament, and it is this constitution which will embody the Legislative Assembly.

Chairman: Now paragraph 62.

Dr. Ambedkar: I did not think there was unanimity regarding the location of the Court at Delhi. I should have liked that this matter should be investigated by some committee.

Mr. Jayakar: I made the suggestion that it should be at a central place somewhere, not Delhi, but some place where the Court could work for the whole of the year, the climate being suitable for working during the whole year.

Mr. Zafrullah Khan: All sorts of suggestions were made from different quarters, but I do not think that any single place had as much support as Delhi.

Chairman: Now, please, paragraphs 63 and 64.

Sir Tej Bahadur Sapru : I am glad that the Report suggests that a Supreme Court, as a Court of Appeal from the British Indian High Courts, should be appointed; but I am rather disappointed with the recommendation that the Supreme Court for British India should not come into existence immediately, and that it should be left to the Legislature to decide the moment when that Supreme Court should come into existence. Let me assure Your Lordship that there is a very, very strong feeling in support of the creation of this Supreme Court almost immediately, and it seems to me that there is no reason whatsoever why we should not be able to bear the financial burden of bringing into existence a Court for which we have been putting forward our claim for many, many years past. It will mean, in my opinion, a great disappointment in British India, if you are going to put off the creation of this Supreme Court to a remote period; and I am very anxious that the Act of Constitution should first of all take up the question of the qualifications of the Judges of the Supreme Court, and at the same time bring into existence this judicial machinery for British India. I would not like to defer it to any future period and to allow inexperienced hands to interfere with a matter of this character. Frankly, therefore, I say that we ought to make up our minds as regards bringing into existence that Supreme Court simultaneously with the bringing into existence of this new constitution. Otherwise, British Indian opinion and legal opinion in India will never be satisfied with this recommendation.

Sir Muhammad Shafi: Lord Chancellor, I entirely endorse what has fallen from the lips of my friend, Sir Tej Bahadur Sapru. The immediate need for the establishment of a Supreme Court in India has been felt by those who are conversant with the position in India for a long time past, and we think that the time has now arrived when steps should be taken immediately towards the establishment of a Supreme Court in India; and, if the matter has to be left, in the manner in which these two paragraphs leave it, for subsequent decision, we do not know when that decision will be arrived at. It is very, very difficult to anticipate, for all sorts of difficulties may arise in the near future with regard to the setting up of the Federal machinery; and if the establishment of the Supreme Court is to be postponed until then, the crying need in India for the establishment of a Supreme Court will remain unsatisfied. I therefore strongly urge, as my friend has done, that these two paragraphs should be modified accordingly.

Sir Provash Chunder Mitter: May I put in a word. First, if the opinion be as strong (and I have no doubt that it is) as Sir Tej Bahadur Sapru and Sir Muhammad Shafi say, then where is the harm in trusting our Federal Legislature? Secondly, if you want to start the Supreme Court at once in your Act of Parliament, then certain investigations are necessary. Will you have your Supreme Court as a Criminal Court of Appeal? On that

important question, two eminent lawyers differ—Sir Tej Bahadur Sapru and Sir Muhammad Shafi.

Sir Muhammad Shafi: No, we do not differ.

Sir Tej Bahadur Sapru: Substantially there is no difference between us.

Sir Provash Chunder Mitter: About the Criminal Court of Appeal, on the question of substance as to the kind of appeal that should be allowed, there is a difference between Sir Tej and Sir Muhammad. Sir Muhammad would allow appeals on a much larger scale. This has a direct bearing on the number of Judges to be appointed. Then, on the third point, if it were limited only to civil cases, investigations would also be necessary. Therefore we either trust the future Legislature or we do not. If we trust our future Legislature, seeing that Muslim opinion, represented by Sir Muhammad Shafi, and Hindu opinion represented by Sir Tej Bahadur Sapru, are in agreement . . .

Sir Tej Bahadur Sapru: I do not represent Hindu opinion in this matter, nor does Sir Muhammad Shafi express Mauhammadan opinion. I am speaking from my experience as a lawyer.

Sir Provash Chunder Mitter: As I have already said, on the question of principle, I entirely agree; but if I have my doubts, it is because I am apprehending practical difficulties and do not want to ignore the realities of the transition period. Therefore, as drafted, it gives our national sentiment full play. I adhere to the draft as it stands.

Mr. Zafrullah Khan: May I say one word, with very great respect, on what Sir Tej Bahadur Sapru and Sir Muhammad Shafi have said. They say that there will be great disappointment unless steps are at once taken for the establishment of a Supreme Court. But this is exactly what the draft lays down. It says that the Committee should recommend that the Constitution Act should prescribe the jurisdiction and functions of the Supreme Court. You have got the whole draft before you. It also says that the Federal Legislature should be given power to adopt these provisions of the Constitution Act in the future if it should think fit to do so. The strongest argument that has been put forward in support of the establishment of a Supreme Court immediately is the very strong desire expressed, in addition to other ways, by resolution of the Indian Legislature. If the Indian Legislature is so strongly desirous of setting up a Supreme Court, there is full power left to it to do so. The very first thing it can do when it is constituted is to pass a Resolution, or to pass a Bill, adopting these provisions of the Constitution Act, and to put them in force immediately. All we are at present doing is this—that we shall not force a Supreme Court of this kind upon Federal India, or Central India—whatever one likes to call it—from the very beginning. It may be only six months after the Federal Legislature begins to function that they will have their Supreme Court, if the desire is so strong; but having regard to all the considerations

which are put forward in these paragraphs, I think it would not be a very wise step to give a decision here that a Court of that kind, with all those jurisdictions, civil and criminal, must necessarily be established the moment the Federation is established.

Chairman: I may be wrong, but I can quite see that there may be two different positions. You might say "Well, the British Parliament shall set up such a Court". The second position might be "Well, the Federal Parliament shall set up the Court". There may be some people who would like to see the first position. There may be some people who would like to see the second position. But is not this a sort of compromise? If everybody is very anxious that there should be such a Court, it is pretty clear, I should think, that the Federal Parliament will set it up; but it might be wise to do this sort of thing (I am only putting forward a suggestion)—that the British Parliament should say "Well, you shall, if you like to set it up, have the Supreme Court; but if you do set it up (*a*) its jurisdiction shall be so and so; (*b*) its Judges shall have this qualification; (*c*) anything else you like to put". The position would then be this, that if you really do all want a Supreme Court, all the Federal Parliament will have to do is to pass a Resolution that it shall be set up, in which event it will be set up with the jurisdiction and with the judicial qualifications and so forth that are prescribed in the Act of Parliament. Perhaps you will just think that over. It would prevent, so to speak, the Federal Parliament being given power to set up a Court just as it liked, with just whatever jurisdiction it liked and with just whatever qualifications it liked. If, however, they are very keen on having a Supreme Court, they can pass a resolution which will bring the Court into being on the lines which will be laid down by the British Parliament.

Sir Muhammad Shafi: May I, in that connection, invite your attention to one consideration? We are laying down that the all-India Federation shall come into existence when a certain percentage of the Indian States—we have suggested at least 50 per cent.—have agreed to come into the Federation. I presume that your Federal Legislature will come into existence after 50 per cent. of the Indian States have agreed to come into the Federation. That may take place in one year, or it may take place in ten years—we do not know when that consummation is to be achieved. Meanwhile, if I may say so, the experience of Sir Tej Bahadur Sapru and myself of the actual position in India—an experience which extends over 39 years—leads us to the conclusion that there is urgent need for the establishment of a Supreme Court in the country. If things are left in the way you suggest, Lord Chancellor, we do not know when the Supreme Court will come into being.

Mr. Zafrullah Khan: Do you want to have the Supreme Court before the Federal Court, Sir Muhammad?

Sir Muhammad Shafi: I want a Supreme Court for India to be established.

Sir Tej Bahadur Sapru: Not before, but simultaneously.

Sir Muhammad Shafi: Even before.

Sir Provash Chunder Mitter: I wish to say a word with regard to that last observation. If Federation does not come about, then I, as the sole representative of Bengal, object to any Supreme Court being set up; but if Federation does come, I welcome the idea of setting up a Supreme Court.

Sir Maneckjee Dadabhoy: I am entirely in agreement with Sir Provash Chunder Mitter, and I wish to assert most emphatically that, unless Federation comes into existence, we should not have a Supreme Court and the luxury of this expenditure. It is somewhat difficult to understand why our lawyer friends will not trust the Federal Legislature to establish a Supreme Court at the earliest opportunity.

Mr. Gavin Jones: The opinions you have had placed before you, Lord Chancellor, are legal opinions, and naturally the legal profession want a Supreme Court. Now, Sir, it will no doubt be the unanimous opinion of the legal profession that they do want a Supreme Court; but I am very doubtful whether it is the opinion of India. I certainly agree with the Report that the matter should be left to the Legislature. However, considering the way in which the legal profession is represented in the Legislature, I should like to have some further protection! I suggest that the Supreme Court should not come into being until after the constitution has been in operation for five or ten years.

Sir Muhammad Shafi: Lord Chancellor, In order to remove any misapprehension, will you permit me to add one word? I was speaking, not only as a lawyer with 39 years' experience, but as a landowner, having a substantial stake in the country and representing a class which, if I may venture to say so, is as worthy of consideration as any other class in India. So that my view should not be taken as the view merely of a lawyer, with the experience that I have had, but also as the view of one who represents a very important class of the country.

Chairman: I am very much obliged for this discussion. What I propose to do on this particular topic is this. It is evidently a very important thing, and you would like to have a Supreme Court at once, whatever happens. We will put the two different opinions here and leave it in that way. What will remain, therefore, is this, that it is the expressed opinion of a lot of you, that, no matter what happens, in your opinion a Supreme Court ought to be set up in the very near future. I will put it in that way. That finishes that point.

Now, will you come to paragraph 65, which deals with criminal practice.

Sir Muhammad Shafi: With regard to paragraph 65, I have one observation to make. In the earlier part of this paragraph you leave certain matters for the consideration of the Federal Legislature; but then you tack on to this recommendation a warning.

Now, I venture to submit that the portion of this paragraph embodying that warning should be omitted altogether. It seems to me that you are not only prejudicing the decision at which the Federal Legislature may arrive after weighing the pros and cons, but, if I may venture to say so, that you are indulging in a course of action which is to the highest degree undesirable. I would omit the warning altogether. Leave it to the Federal Legislature to come to a decision on these points; it will be for them to decide the point one way or the other.

Sir Provash Chunder Mitter: But as that opinion was expressed by some of us, I think there should be something.

Sir Muhammad Shafi: It is not your business to dictate to the Federal Legislature.

Sir Provash Chunder Mitter: It is my business to advise this Committee.

Sir Muhammad Shafi: You can give them advice when you are elected a member of the Federal Legislature.

Sir Akbar Hydari: I hold very strongly the opinion that this note of warning is very necessary. I feel that really there is not enough judicial talent for manning a Court or two or three Courts with the thirty or thirty-five Judges who will be required for constituting a Federal Court and a Supreme Court for British India. For that reason, I very strongly hold that the order should be what has been more or less sketched out in this Report. First we have the Federal Court, which will require about five Judges. With regard to five Judges, I am quite certain that we shall be able to produce men who will really command the confidence of everybody. But then, as soon as it comes to the creation of a Supreme Court for British India on its civil side and on its criminal side, there is the question of the large number of judicial officers required, and secondly, there is the question of financing that Court and the resources from which it will be financed, because that Court will be entirely for British India.

Sir Tej Bahadur Sapru: My Lord, I wish to say only one thing more. Howsoever good the constitution you may give us, I want to give this warning in the friendliest possible spirit—that British India will never look at your constitution if you do not give us a Supreme Court. I absolutely deny the statement of Sir Akbar Hydari that there is no judicial or legal talent in the country which can be brought to bear on this Court. As a member of the legal profession I say you can have at least thirty or forty first-class lawyers to sit on the Bench—lawyers who will know their constitutional law and general, civil and commercial law.

Sir Muhammad Shafi: And, as I understand it, the warning relates not to the Federal Court which you are going to establish, but with regard to the Supreme Court, with which my friend Sir Akbar Hydari has nothing to do.

Sir Tej Bahadur Sapru: I would beg the Committee to realise the importance of this and not to trifle with it and pass it over.

Mr. Zafrullah Khan: After the first sentence the rest should be deleted.

Mr. Jayakar: I thought the warning given in the draft related to the criminal jurisdiction; that is how I read the paragraph.

Sir Muhammad Shafi: And civil jurisdiction.

Mr. Jayakar: It says:—

> "But the Committee cannot refrain from a word of warning."

I submit, having regard to the possibilities, that that warning was necessary.

Sir Sultan Ahmed: I do not think it is relating to criminal matters. Read the next sentence.

Mr. Jayakar: Paragraph 65 commences in this way:—

> "A proposal to invest the Supreme Court above described with jurisdiction to act as a Court of Criminal Appeal for the whole of British India also found a certain measure of support. It is clear that, even if a right of appeal to this Court in the graver criminal cases were given, the work of the Court, and therefore the number of Judges, would be enormously increased."

That refers to criminal cases, of course.

> "The Committee had not the time at their disposal to enter into a close examination of the question whether, in principle, a Court of Criminal Appeal for the whole of British India is desirable, and they do not feel themselves able to express any opinion upon the matter, though they recognise its great importance."

That again refers to criminal matters.

> "For the same reason that they have found themselves unable to recommend the immediate establishment, by the constitution itself, of a Supreme Court, for appeals in civil matters from the High Courts of British India, they are unable to recommend the immediate establishment of a Court of Criminal Appeal."

That again refers to the Criminal Court.

> "This matter is one which, in their opinion, must be left to the future Federal Legislature to consider; and if that Legislature should be of opinion that such a Court is required, there will be no difficulty, if it should be thought desirable, in investing the Federal Court, or the separate Supreme Court, as the case may be, with the necessary additional jurisdiction."

That, I submit, again refers to the jurisdiction of which the paragraph speaks.

> "But the Committee cannot refrain from a word of warning. It appears to them probable that a Court invested with

> the various jurisdictions which were suggested in the course of the Committee's discussions would have to consist of probably as many as twenty or thirty Judges, and in all likelihood of many more. To create an entirely new Bench of this size would strain the judicial resources of any country, and it can scarcely be expected that the result would be satisfactory. The Committee are therefore strongly of opinion that one step only should be taken at a time and that experience should be gradually accumulated."

The one step means, according to my view of it, only the Federal Court, and we are not satisfied with that. What I wanted to say, Lord Chancellor, was this— that the view was very strongly expressed on this side also—and there were divided opinions in British India—that we should not make two experiments at the same time. We should have one experiment, and as our experience accumulated and confidence was gathered, then the other experiments should be tried. What you are doing, Sir, is only expressing that view. You have put it in the form of a warning. The word "warning" might be removed, if that is the objection; but surely we have a right to say that the view expressed by some of us should be mentioned in the Committee's Report. Of course, the word "warning" might be struck out.

Chairman: I think we might come to an end of this now. I think, perhaps, that the warning is rather heavily weighted. Cannot we put something like this? First of all, if you look at the top of page 10, you see—

> "For the same reason that they have found themselves unable to recommend the immediate establishment, by the constitution itself, of a Supreme Court"—

that will have to be a little altered, because I am going to put the contending views on both sides. Then cannot we put in something like this. I myself do not think that it is right to say that there will not be found sufficient distinguished advocates in India to have a number of Judges. I think you will probably find that there are. In this country there are dozens. Cannot we put it something like this:—

> "It appeared, however, to some members of the Committee that a Court, invested with the various jurisdictions which were suggested in the course of the Committee's discussions, would have to consist of probably as many as twenty or thirty Judges, and in all likelihood many more,"

and leave it there. That would draw attention to the fact. Some people then could put it in both ways. My friends on my immediate left would say, "Well, we cannot have as many as that because of the expense." Other people would say there are not sufficient good men in India. If we left it in that sort of way, and just drew attention to the fact that a Court like that would necessitate a great number of Judges, I think that would meet the point.

Mr. Jinnah: May I just say a word? Is it not that we are attaching too much importance to this warning? After all, these are only words of wisdom that you want to incorporate, and which are very obvious and very commonplace. The Federal Legislature, when it is in full session and comes to consider the question of a Supreme Court or a Court of Criminal Appeal, will look at everything—not only everything that you are urging here, but a great deal more as well. Therefore, I do not wish to have the honour of participating in this warning, which contains no wisdom but very common platitudes. I would, therefore, suggest that it carries us nowhere, and that we should drop it.

Chairman: We will indicate, in accordance with what some people want, that some members of the Committee draw attention to the fact that it is probable that a Court, invested with the various jurisdictions which were suggested in the course of this discussion, would have to be composed of as many as 25 or 30 Judges, and in all likelihood many more, and leave it like that. We do not want to teach our grand-mothers to suck eggs! With that little indication, they will be able to say " We must take all the facts into consideration ".

Now paragraph 66.

Sir Provash Chunder Mitter: I strongly urge that Service Judges should no longer be Judges of the High Court. I want it to be recorded that that opinion was expressed.

Mr. Zafrullah Khan: That is in the Services sub-Committee's Report.

Sir Provash Chunder Mitter: There is another thing to which I would like to draw your attention and that of my colleagues. You have suggested that the age limit of the Federal Court Judges should be 65. I say that it should be considered whether the age limit of High Court Judges should not also be 65. I suggest the same rule as regards age should apply to both.

Mr. Jayakar: There is one matter which seems to have been deliberately excluded, namely, the power of a single Judge to hear a second appeal. If that has been purposely excluded I have nothing more to say.

Chairman: I do not think it has been excluded, Mr. Jayakar.

Mr. Jayakar: You know what I mean. There was a very strong opinion expressed that the practice which has been growing up in most provincial High Courts is a bad practice. There was a unanimous opinion expressed about that on this side.

Chairman: I have made a note of that—that, quite apart from any Indian Federal Court, we should see into it.

(The Committee adjourned at 12-55 p.m.)

NOTE.—For an amendment of the Third Report of the Federal Structure Committee (paragraph 14), *see* also page 1035.

THIRD REPORT OF FEDERAL STRUCTURE COMMITTEE.

Introductory.

1. The Committee's task at the Second Session of the Conference was to continue their discussions at the point at which they were left by their Report of the 13th January, 1931, and by the Prime Minister's Declaration of the 19th January, and to endeavour, so far as possible, to fill in the outlines of the Federal Constitution for Greater India which was sketched in those documents.

2. In approaching this task, the Committee have been assisted by colleagues who did not share in their earlier deliberations. In this connexion it will be remembered that, in virtue of an agreement recorded in March last, the Indian National Congress decided to participate in their labours.

3. Since January last, there has been much public discussion of the constitutional proposals which emerged from the last Session of the Conference. The Committee resumed their deliberations with the knowledge of this public discussion, and with the conviction that it is in a Federation of Provinces and States that the solution of the problem of India's constitutional future is to be found.

4. A further examination of the problem has confirmed them in the belief that by no other line of development can the ideal in view be fully realised. For this purpose it is essential that the " India " of the future should include, along with British India, that " Indian India " which, if Burma is excluded, embraces nearly half of the area and nearly one-fourth of the population of the country—an area and population, moreover, which are not self-contained and apart geographically or racially, but are part and parcel of the country's fabric; and its constitution must be drawn on lines which will provide a satisfactory solution for the problem of the existence, side by side, of future self-governing Provinces and of States with widely varying polities and different degrees of internal sovereignty, whose fortunes are, and must continue to be, closely interwoven.

5. The Committee rejoice to think that the Princes, while naturally determined to maintain their internal sovereignty, are prepared, and indeed anxious, to share with the British Indian Provinces in directing the common affairs of India.

6. It will be easy for the constitutional purist, citing federal systems in widely different countries, to point out alleged anomalies in the plans which the Committee have to propose to this great end; but the Committee, as they stated in their First Report, are not dismayed by this reflexion. Their proposals are the outcome of an anxious attempt to understand, to give full weight to, and to reconcile, different interests.

7. The Committee have taken into account:—

(*a*) The widespread desire in India for constitutional advance;

(*b*) the natural desire of the Indian States to conserve their integrity;

(*c*) the indisputable claims of minorities to fair treatment;

(*d*) the obligations and responsibilities of His Majesty's Government; and

(*e*) the necessity, paramount at all times, but above all at a transitional period like the present, when the economic foundations of the modern world seem weakened, of ensuring the financial credit and the stability of Government itself.

8. Without a spirit of compromise, such diverging interests cannot be reconciled; but compromise inevitably produces solutions which to some, if not to all, of the parties, may involve the sacrifice of principle.

9. It follows that, in many cases, many members of the Committee would have preferred some solution other than that which appears as their joint recommendation. But recognising that the basic aim of this Conference is, by the pooling of ideas and by the willingness to forego for the common good individual desires, to attain the greatest measure of agreement; above all, recognising that the time has come for definite conclusions, the Committee are prepared to endorse the conclusions set out in this Report.

The structure, size, and composition of the Federal Legislature.

10. The Committee expressed the view in their previous Reports that the legislative organ of the Indian Federation should consist of two Chambers, which will be empowered to deal with the whole range of the activities of the Federation, both those which affect British India only, and those which affect all federal territory. In the course of their discussions, preferences were expressed in some quarters for a unicameral Legislature, on considerations alike of simplicity, efficiency and economy; while some members urged that, having regard to the nature of the matters to be dealt with by the Federation, a single small Federal Chamber, which would adequately reflect the views of the governments of the constituent Units, would be the right solution of the problem.

11. At a later stage, again, the Committee were placed in possession of proposals which they have not been able fully to discuss, but which clearly demand further consideration, though the Committee fully realise that the adoption of either of these plans would involve material modification of the framework hitherto contemplated.

12. One of these plans would substitute for the Upper Chamber a small body consisting of nominated delegates of the governments

of the federating Units, which would have the right of initiating legislation and would be empowered to exercise a suspensory veto over the measures passed by the elected Chamber. This body would also have the right to express its opinion upon all measures of the Federal Government before they were laid before the elected Chamber. The authors of this plan also contemplate the possession by this body of certain advisory functions in the administrative sphere.

13. The second of these plans contemplates the confederation of the States into a single collective body for the purpose of federating with the British Indian Provinces. Its supporters would prefer a single Federal Chamber in which the representation of the Indian States collectively should be 50 per cent., the representatives being selected by an electoral college consisting of the federated States as a whole. In the event of a decision in favour of a bicameral Legislature, 50 per cent. of the seats in the Upper Chamber would be reserved for the States, their representation in the Lower Chamber being on population basis.

14. Upon the assumption, however, that the Legislature is to be bicameral, a variety of factors must be taken into account in determining the size of the Chambers. Cogent theoretical arguments can be adduced (and were in fact advanced by some Delegates) in support of the view that, for a country of the size and population of India, a Legislature consisting of from 600 to 700 members for the Lower Chamber, and from 400 to 500 for the Upper, could not be regarded as excessive in size, and that smaller numbers would fail to give adequate representation to the many interests which might reasonably claim a place in it. On the other hand, arguments no less forcible were adduced in favour of the view that Chambers exceeding 100 and 250 respectively might prove ineffective organs of business. We have given these divergent views the best consideration of which we are capable, and recommend as the result that the Chambers should consist, as near as may be, of 200 and 300 members respectively, in which the allotment of seats to the States should be in the proportion of 40 per cent. (or approximately 80 seats) in the Upper Chamber, and $33\frac{1}{3}$ per cent. (or approximately 100 seats) in the Lower.

The Muslim delegation and some others are unable to subscribe to the whole of this paragraph, as they are opposed to the principle of giving weightage to the representation, in the Legislature, of the States in excess of their population proportion.

15. This latter recommendation is, of course, based on the assumption that the whole body of the States will eventually adhere to the Federation. The view was strongly expressed that, in the case of States not adhering at the outset, seats allotted to them as the result of the procedure contemplated in paragraph 26 should remain unfilled pending their adherence. But it was also urged that this might lead to a situation under which States adhering at the outset would find their total voting strength in the Legislature so small as to be inconsistent with their position as representing one

of the main constituent elements in the Federation. Some members of the Committee have stated it as their opinion that, in the event of the original adherents not forming a substantial proportion of "Indian India", some method should be devised by which their voting strength would be temporarily augmented pending the accession of other States. But the whole Committee hope that the contingency which might necessitate such an augmentation will not arise.

16. In any event, difficulty might arise in regard to States which are grouped for the purpose of deputing a representative; but it would be premature to attempt to suggest the best solution for such problems until the measure of adherence by "grouped" States can be fairly accurately ascertained or foreseen. The Committee accordingly content themselves with expressing the hope that the measure of adherence in each group will be sufficiently great to justify the filling of the seat allotted thereto by the nominations of the adhering States. Should the system of grouping be such as to admit of the allotment of two or more seats to one group, difficulties of this order would be more easy of solution.

17. The Committee recommend that the 200 members of the Upper House should be chosen in the main to represent the component Units—the Provinces of British India and the States—and that the representatives of the British Indian Provinces should be elected by the Provincial Legislatures by the single transferable vote. Candidature for the Federal Legislature should not, of course, be restricted to members of a Provincial Legislature, though such persons should be eligible if otherwise qualified. But no person should be a member of both a Provincial and the Federal Legislature.

18. In the case of those States which secure individual representation, their representatives will be nominated by the Governments of the States. In the case of those States, however, (and there will necessarily be many such), to which separate individual representation cannot be accorded, the privilege of nomination will have to be shared in some manner which it will be easier to determine when the various groups have been constituted—a process which will, of course, entail a detailed survey of local and regional circumstances.

19. For the Lower Chamber, the Committee consider that the selection of the British Indian representatives should be by election otherwise than through the agency either of the Provincial Legislature or of any existing local self-government bodies.* Most members consider that election should be by territorial constituencies, consisting of qualified voters who will cast their votes directly for the candidate of their choice. Others have advocated some method whereby some of the obvious difficulties which must confront a candidate, in canvassing and maintaining contact with so large an area as the average constituency will involve, may be obviated.

* This expression is not intended to exclude such bodies as Village Boards or Village Panchayats.

20. The actual framing of the constituencies must necessarily depend largely upon the detailed arrangements to be made for the revision of the existing franchise—a task which is to be undertaken by a special Franchise Committee. The Committee therefore recommend that this body should be charged also with the duty of making proposals for the constituencies to return the British Indian members of the Lower Chamber of the Federal Legislature, and that it should explore fully the alternatives of direct and indirect election, indicated in the preceding paragraph, in the light of the practical conditions which will be presented by the size of constituencies, their populations and the proportion of this population to be enfranchised. The area and population of British India, excluding Burma, being, in round figures, 800,000 square miles and 255 millions respectively, and the seats in the Lower Chamber available for representatives of that area, on the Committee's proposals, being approximately 200, it follows that the average area of a constituency would be approximately 4,000 square miles, and the average population per seat some $1\frac{1}{4}$ millions. And while, in many cases, the former of these figures would obviously be reduced by the natural grouping of the population in urban areas, the difficulties presented by electoral areas and populations of this size would, of course, be accentuated by the existence of separate communal electorates. It may well be that, while no difficulty will be experienced in providing for direct election in urban areas, some method of indirect election may prove desirable for rural areas.

21. As regards the appointment of the British Indian seats in both Chambers to the Provinces *inter se*, the Committee recognise that the population ratio, which they were disposed to recommend in their previous Report as the guiding principle, would not produce a satisfactory result unless it were tempered by other considerations. To take only one instance, it would immediately reduce the Bombay Presidency—a Province of great historical and commercial importance, which has for many years enjoyed approximately equal representation in the Central Legislature with the other two Presidencies and the United Provinces—to less than half the representation these latter will secure.

22. For the Upper Chamber, which will represent in the main the Units as such, the Committee think that the guiding principle should be a reasonable approximation to equality of representation for each Unit. Absolute equality, having regard to the great variations in size and population between the Provinces, would obviously be inequitable. The problem is a difficult and complicated one, involving the careful assessment of local factors, which is beyond the competence of this Committee. But the suggestion has been made that a possible solution might, for example, be to assign to each of the Provinces which exceeds 20 millions in population—namely, Bengal, Madras, Bombay, the United Provinces, the Punjab and Bihar and Orissa—an equal number of seats, say, 17; to the Central Provinces (if it included Berar) and Assam, say 7 and 5 seats respectively; to the North-West Frontier Province, 2

seats; and to Delhi, Ajmer, Coorg and British Baluchistan, 1 seat each.

23. In the Lower Chamber, representing as it will primarily the population of the federated area, we consider that the distribution should tally as closely as possible with the population ratio, but that some adjustment will be required in recognition of the commercial importance of the Bombay Presidency and of the general importance in the body politic of the Punjab, which it will be generally conceded is not strictly commensurate with its population as compared with that of other Provinces. We suggest that this adjustment might be secured in the case of Bombay, to some extent at all events, by adequate weightage of the special representation which we have recommended for Indian and European Commerce and, in the case of the Punjab, by some arbitrary addition to the 18 seats which it would secure on the basis of its population. Here again, the Committee are not in a position to make a definite recommendation, but they take note of a suggestion which has been made for the allotment to the Punjab and Bombay, and also to Bihar and Orissa, of 26 seats each; to Madras, Bengal and the United Provinces, of 32 seats each; to the Central Provinces, of 12; to Assam, of 7; to the North-West Frontier Province, of 3; and to the four minor Provinces, of 1 each—by this measure securing a distribution of the 200 seats which might be held to satisfy reasonable claims without doing undue violence to the population basis. But these figures, and those suggested in paragraph 22, would obviously require further consideration.

APPORTIONMENT BETWEEN THE STATES OF THEIR QUOTA.

24. The Committee recognise that this is primarily a matter for settlement among the Princes themselves; but the representatives of other interests can hardly regard it as a matter of indifference since, until a satisfactory solution is found, the idea of federation necessarily remains inchoate, and an important factor in determining the decision of individual States as to adherence to the Federation will be lacking. In view of the admitted difficulties of the question, the Committee are anxious to assist by friendly suggestions towards the consummation of an acceptable and generally accepted conclusion. The Committee are fully aware that the effective establishment of federation postulates the adherence of the major States and that the absence of even a few of the most important States, however many of the smallest might be included, would place the Federation under grave disadvantages. At the same time, they think that it is essential that the States as a whole should secure representation which will commend itself to public opinion as generally reasonable, and that it is hardly less important to satisfy, so far as may prove possible, the claims of the small States, than to provide adequate representation for those which cover large areas.

25. Two suggestions have been advanced, in the course of the Committee's discussions, for the solution of this problem. The first

was that the matter should be entrusted to the Chamber of Princes, with such arrangements as would secure an adequate voice in its deliberations to the small States, and to such States as are not represented in the Chamber at all. The second, based on the belief that the inherent difficulties of the problem would prove such that the Princes—acting through whatever agency—would be unable to evolve a plan which would meet with general acceptance and satisfy all claims, and consequently that a procedure based upon the first suggestion would merely involve infructuous delay, was that the task of apportionment should be remitted to an impartial Committee or tribunal on which the States themselves should not be given any representation but before which they would all be invited to urge their claims.

26. The Committee are not in a position, for reasons already stated, to make any definite recommendation as to the acceptance of either of these suggestions; but they consider that the best course would be to allow a period of time, which should not, they think, extend beyond the end of March, 1932, within which the Princes should be invited to arrive at a settlement, on the understanding that if within that period a settlement were not in fact secured, an impartial tribunal would be set up by His Majesty's Government to advise as to the determination of the matter.

Method of selection of States' Representatives in the Lower Chamber.

27. While the Committee remain of opinion that this question must be left to the decision of the States, it cannot be contended that it is one of no concern to the Federation as a whole. They note the assurances of certain individual members of the States Delegation that, in those States which possess representative institutions and for which these members were in a position to speak, arrangements will be made which will give these bodies a voice in the Ruler's selection. The Committee as a whole are prepared to leave this matter to the judgment of the States.

Representation of special interests in the Federal Legislature.

28. In paragraph 34 of their Second Report, the Committee recommended that special provision should be made in the Federal Legislature for the representation of the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce and Labour. We make no recommendation here relating to the first four of these interests, regarding the extent and method of their representation, nor for the representation of Women in the Legislature, since the decisions on these points are for the Minorities Committee.

29. But we affirm our previous recommendation that provision should be made for the special representation of the Landlord

interest, of Commerce (European and Indian) and of Labour. The number of seats to be assigned to each of these four interests and their apportionment amongst the various Provinces are questions which should be considered by the Franchise Committee, as also is the question of their method of election. Wherever possible, the method should be election rather than nomination.

Nominated members.

30. In paragraph 34 of the Committee's Second Report, the suggestion was also made that the Governor-General should be empowered to nominate to each Chamber a specified number of persons, not exceeding perhaps ten, to represent the Crown. After further consideration, the Committee see no advantage to be gained from pursuing this suggestion. The persons appointed by the Governor-General to assist him in the administration of the Reserved portfolios will, of course, play their part in the business of the Legislature; but it is not apparent how their task would be facilitated by the presence of a small body of nominated members who, if they were non-officials, would rarely possess any special or effective knowledge of questions connected with the administration of the reserved Departments, and whose votes would be too few to influence decisions.

31. If, on the other hand, these members were officials chosen for their knowledge of the subjects in the Governor-General's charge, the same difficulty would be experienced as under the present régime of sparing from their departmental duties, for attendance in the Legislature, so considerable a number of officials as the suggestion contemplates. Moreover, the voting power which such officials would exercise would either be negligible or else would tend to maintain an " official bloc " which, in the opinion of the majority of the Committee, would be out of place in the conditions of the new constitution.

32. On the other hand, while the Committee, for the reasons given, are not prepared to advocate the nomination of members in either Chamber to represent the Crown or Crown interests, they are impressed with the desirability of securing to the Federation the services in the Upper Chamber of persons of the elder statesman type with an experience of public affairs, both in the political sphere and outside it. It may well be that person of this type, whom India would delight to honour, may be unwilling, through the absence of provincial influence or connexions, to solicit the suffrages of Provincial Legislatures, or to promote their candidatures by identifying themselves with particular political parties; and the small chances of success at the polls, when party feeling runs high, likely to be attained by persons possessing, in the English phrase, the " cross-bench " mind, need not be emphasised. Yet it would be a grave loss to India if such persons were excluded from her counsels. The Committee are, therefore, of opinion that a small proportion of seats should be reserved, in the Upper

Chamber only, for persons to be appointed by the Governor-General. The Governor-General would, in making these appointments, act as a general rule upon the advice of his Ministers, though we are disposed to think that, possibly by a constitutional convention, possibly by provision in the Constitution Act, two or three of the appointments might be made on the Governor-General's personal responsibility. In order to avoid any suggestion, however, of an official bloc, the Committee are of opinion that no serving official should be qualified to sit in the Upper Chamber as a nominated member.

QUALIFICATIONS AND DISQUALIFICATIONS FOR MEMBERSHIP.

33. For the Lower Chamber, in British India the qualification for membership should be identical with that for a voter; that is to say, any person who is qualified as an elector for a constituency of a particular class should be qualified also to stand for election by any constituency of that class in the Province.

34. But, for candidates for the Senate, certain additional qualifications should be laid down. Without attempting to prescribe these in detail—a task which would better be undertaken by the Franchise Committee—we consider that the existing rules regulating the qualifications of voters (and consequently of candidates) for the Council of State should be adopted as a model for candidates for the Upper Chamber, except that the minimum age limit should be 35 years, and subject to such modifications as may be necessary to prevent the virtual exclusion of Women, the Depressed Classes and Labour.

35. It will be necessary also to prescribe the qualifications of voters in the special constituencies we have recommended to secure the representation in the Upper Chamber of Landlords, Commerce (European and Indian) and Labour; and—subject to the age limit just suggested—a person qualified as a voter in any of the special constituencies should be qualified also as a candidate. Whether, in the case of all or any of these special constituencies, the present qualifications for voters for the Council of State could be adopted as they stand, appears doubtful; but this we would leave for the consideration of the Franchise Committee.

36. The existing disqualifications for membership for the Indian Legislature appear to us generally suitable for retention, though there was some difference of opinion as to those arising out of convictions for criminal offences, and suggestions were made—which we regard as impracticable—that a distinction should be drawn for this purpose between "political" and other offences, or between offences involving moral turpitude and those which do not. On the whole, we regard a restriction of this nature on the free choice of the elector as of little value as a means of ensuring probity of character in candidates, and we recommend that they should be abandoned. At the same time, some members of the Committee consider that the rules should be so framed as to disqualify from

candidature any person, who at the time of an election, is actually undergoing a sentence of imprisonment and who would consequently be unable, if returned, to fulfil his duties to the Legislature and to his constituents. On the other hand, a section of the Committee is opposed to this view, being of opinion that a sentence of imprisonment should not, in any circumstances, constitute a disqualification.

37. Although it will clearly be impossible to secure uniformity of qualification in British India and the States, we think it of great importance that there should be absolute uniformity in the mater of disqualifications. These should, therefore, be embodied in the constituion and should apply to all candidates alike.

Oath of allegiance.

38. The Committee consider that, following common practice in the Empire, the Indian Constitution should provide for an Oath of Allegiance to be taken by members of the Federal Legislature on assumption of their seats. They do not suggest a definite formula at this stage, but its terms will require careful consideration.

Relations between the two chambers.

39. As will appear from paragraphs 26 and 35 of the Committee's Second Report, this important question was discussed for the first time in the Committee's present Session. The careful consideration we have now given to the matter has led us to the view that nothing should be done in the new constitution which would have the effect of placing either Chamber of the Federal Legislature in a position of legal subordination to the other. It would be a misconception of the aims which we have in view to regard either Chamber as a drag or impediment on the activities of the other. In our view, the two Chambers will be complementary to each other, each representing somewhat different, but, we hope, not antagonistic, aspects of the Federation as a whole. Absolute equality between the two Chambers of a bicameral Legislature is no doubt unattainable, and, if it were attainable, might well result in perpetual deadlock; and there is no less doubt that, the provisions of the constitution notwithstanding, the evolution of political development will inevitably result, in the course of time, in placing the centre of gravity in one Chamber.

40. But, so far as the letter of the constitution is concerned, we consider that, subject to the consideration shortly to be mentioned, there would be no justification for endowing one Chamber at the outset with legislative powers which are denied to the other. We accordingly recommend that, while the constitution should provide that, subject to the special provisions to be referred to later, no Bill should become law until it is assented to by both Chambers, it should contain no provisions which would disable either Chamber from initiating, amending or rejecting any Bill, whatever its character. This principle should, however, in the opinion of almost all the British Indian Delegates, be subject to the exception

that the right of initiating Money Bills should vest in the Lower Chamber alone, though the States Delegation were almost unanimously opposed to the drawing of this distinction. Subject, of course, to the decision on the point just mentioned, the principle of equality also appears to us to demand that the Government should be entitled to test the opinion of the other Chamber if one Chamber has seen fit to reject a Government Bill, and that, in the event of its passage by the Second Chamber it should be treated as a Bill initiated in that Chamber and taken again to the first.

41. In the event of rejection by one Chamber of a Bill which has been passed by the other, or of its acceptance by either in a form to which the other will not agree, we recommend that, subject to certain conditions which should be set out in the constitution, the Governor-General should have power, either after the lapse of a specified period or, in cases of urgency, at once, to secure the adjustment of the difference of opinion by summoning a Joint Session.

42. As regards the voting of Supply, the opinion of the British Indian Delegates was almost unanimously in favour of confining this function to the Lower Chamber. Their view was based on the precedent afforded in this respect, not merely by almost every other constitution, but by the actual powers which have been enjoyed by the Indian Legislative Assembly during the past ten years. The States Delegates, however, were almost unanimously of opinion that the principle of equality of powers should apply also to the voting of Supply. In their view, since the Supply required by the Federal Government will be required for the common purposes of the Federation (or for the common purposes of British India), there is no logical reason which could be adduced in favour of depriving the representatives of the Federal Units in the Senate of a voice in the appropriation of the revenues, the responsibility of raising which they would share equally with the members of the other Chamber.

43. Whatever may be the decision between these conflicting views, the Committee assume that the Demands for Grants, whether voted upon by both Chambers or only by the Lower Chamber, would be so arranged as to separate expenditure required for Federal purposes from that required for "Central" purposes, so that the latter might stand referred to a Standing Committee of the British Indian members of both Chambers.

NOTE.

One member of the Committee raised the important question of empowering the Federal Legislature to deal with certain aspects of Labour questions and of empowering the Federal Government and Legislature to deal with questions connected with the ratification of International Labour Conventions.

A solution of the difficulties to which he has drawn attention will have to be found when the precise relationship between the legisla-

tive powers of the Federal and Provincial Legislatures is finally determined. In this particular matter there has not been opportunity this session to advance further than the general conclusions reached at the last Session, and the Committee are unable to report in detail upon it. Further consideration will have to be given to it.

FEDERAL FINANCE.

44. The Committee did not find time during the first Session of the Conference to consider the subject of "Federal Finance", which may be summarily described as the question of the apportionment of financial resources and obligations between the Federation and the Units. On taking up this subject, the Committee found it desirable to remit it for examination by a sub-Committee, over which Lord Peel presided.

45. The Report of this sub-Committee, which was in effect unanimous, is appended to this Report. Little criticism was directed to its main features, and the Committee accept the principles contained in it as a suitable basis on which to draft this part of the constitution.

46. The Committee were, however, not satisfied with the proposals in Lord Peel's Report for a review of the problem by Expert Committees. Fear was widely expressed that these might, by recommending principles at variance with those upon which the Conference was agreed, tend to undo work already accomplished; and further, that the procedure suggested might cause unnecessary, and perhaps dangerous, delay in settling various points which had an important bearing on the character of the new Federation. The Committee accordingly consider that the suggested procedure should be revised in the manner described below.

47. No change need be made as regards the second of the two Committees (concerned with paragraphs 17—20 of Lord Peel's Report), except that it should have no connection with the other Committee. It should be noted that, of the matters within the purview of this "States" Committee, it is only in respect of those dealt with in paragraph 18 of Lord Peel's Report that it is essential to reach a settlement before the Act setting up the Federation comes into operation.

48. In place of the first Committee recommended in Lord Peel's Report, there should, as early as possible, be appointed in India a "fact-finding" committee, consisting of officials familiar with questions of finance, including States' finance. Without elaborating terms of reference, the functions of this committee may be sketched as follows:—

(*a*) To investigate the division of pension charges (paragraph 5 of Lord Peel's Report).

(*b*) To investigate the classification of pre-Federation debt, as contemplated at the end of paragraph 6 of Lord Peel's Report.

(*c*) To calculate the effect on the Provinces of various possible methods (of which there are only a few to be considered) of allocating the proceeds of Income-tax to the Provinces.

(*d*) To give an estimate of the probable financial position of the Federation in its early years under the scheme proposed in Lord Peel's Report, indicating, *inter alia*, the probable results of federalising Corporation tax, Commercial Stamps, Tobacco excise, or other possible national excises.

Of these, (*d*) is the most important.

It was pointed out that (*b*) had no reference to the investigation of any claim such as had been raised by the Congress, that liability for a portion of the Public Debt of India ought to be undertaken by the United Kingdom.

49. The facts and estimates required from the Committee described in the preceding paragraph should not take long to produce. There will remain to be decided, in the light of them, certain questions, as, for example—

(i) The exact detailed form of the list of Federal taxes (within the general frame-work laid down by Lord Peel's Report); in particular, a final decision will have to be taken about Corporation tax and specific Federal Excises.

(ii) The initial amount of the Contributions from the Provinces.

(iii) The precise period to be laid down for the extinction of the Provincial Contributions referred to in (ii), and of the contributions from certain States which are to be reviewed under the procedure mentioned in paragraph 47 above.

(iv) The exact method according to which Income-tax is to be returned to the Provinces.

50. There will also be one or two other points, left doubtful by Lord Peel's sub-Committee, which will fall for decision. It will be necessary to devise a procedure for discussion and settlement of the outstanding matters.

51. It may be that, in other fields, points of substance directly affecting federation will also remain for settlement after this Session of the Conference. It might thus prove convenient to use a common machinery for their disposal. It is accordingly agreed that this question of procedure should be postponed to a later stage.

The Federal Court.

52. The necessity for the establishment of a Federal Court was common ground among all members of the Committee, and such differences of opinion as manifested themselves were concerned for the most part, with matters of detail rather than of principle. It was recognised by all that a Federal Court was required both to interpret the constitution and to safeguard it, to prevent encroach-

ment by one federal organ upon the sphere of another, and to guarantee the integrity of the compact between the various federating Units out of which the Federation itself has sprung.

53. The first question which the Committee considered was the nature of the Court's jurisdiction, and it was generally agreed that this jurisdiction must be both original and appellate.

54. The Court ought, in the opinion of the Committee, to have an exclusive original jurisdiction in the case of disputes arising between the Federation and a State or a Province, or between two States, two Provinces, or a State and a Province. The Committee are of opinion that disputes between Units of the Federation could not appropriately be brought before the High Court of any one of them, and that a jurisdiction of this kind ought rather to be entrusted to a tribunal which is an organ of the Federation as a whole. It would seem to follow that the Court should have seisin of justiciable disputes of every kind between the Federation and a Province or between two Provinces, and not only disputes of a strictly constitutional nature; but that in the case of disputes between the Federal Government and a State, between a State and a Province, or between two States, the dispute must necessarily be one arising in the federal sphere, that is to say, one in which a question of the interpretation of the constitution (using that expression in its broadest sense) is involved, since otherwise the jurisdiction would extend beyond the limits of the Treaties of cession which the States will have made with the Crown before entering the Federation. The Committee are disposed to think that decisions by the Court, given in the exercise of this original jurisdiction, should ordinarily be appealable to a Full Bench of the Court.

55. In the case of disputes arising between a private person and the Federation or one of the federal Units, the Committee see no reason why these should not come, in the first instance, before the appropriate Provincial or State Court, with an ultimate right of appeal, if the matter arises within the federal sphere, to the Federal Court, since it would obviously be oppressive to compel a private citizen who had a grievance, however small, against, say, his Provincial Government, to resort exclusively to Delhi, or wherever the seat of the Federal Court may be, for the purpose of obtaining justice. But even in the federal sphere the right of suit against a State in its own Courts accorded to a citizen of that State must be regulated by the laws of that State, though the citizen who is given a right of suit by the State law could not be deprived of his right of access to the Federal Court by way of appeal, whatever form that appeal may take. In this connection, the Committee draw attention to the need of investing both Provinces and States with a juristic personality, for the purpose of enabling them to become parties to litigation in their own right. The Committee understand that, at the present time, no action lies against a Province of British India as such, and that no action can be brought against an Indian Prince in a British Indian Court save under very special conditions. On the other hand, the Committee are

informed that, in some of the States, provision has already been made whereby proceedings can be taken against the State in its corporate capacity as distinguished from the Ruler of the State himself. This subject will require to be further examined.

56. The Federal Court ought also, in the practically unanimous opinion of the Committee, to have an exclusive appellate jurisdiction from every High Court, and from the final Court in every State, in all matters arising in the federal sphere, as defined above. A certain difference of opinion on questions of method has, however, to be recorded. The suggestion was made that some plan might be devised whereby anyone desiring to challenge the constitutional validity of a law passed by the Federal or a Provincial Legislature could obtain a legal decision on the matter at an early date after the passing of the Act, and that this might be done by means of a declaratory suit to which some public officer would, for obvious reasons, be a necessary party. The advantages of some such procedure are manifest, and the subject deserves further examination. Assuming, however, that legal proceedings of this kind are found possible, the Committee think it right that they should be confined to the Federal Court alone, at any rate where the validity of a Federal law is in issue, though there was a difference of opinion upon the question whether, in the case of a Provincial or State law, the proceedings might not be permitted in the first instance in the appropriate High Court or State Court. Where, however, a constitutional issue emerges in the course of any ordinary litigation, the tribunal which may have seisin of the case should have jurisdiction to decide it, subject always to an ultimate right of appeal from the State Court or High Court (if the case gets so far) to the Federal Court.

57. The form which the appeal should take might be left to be dealt with by Rules of Court, but, whatever form or forms are adopted, the Committee are clearly of opinion that there must be an ultimate appeal as of right to the Federal Court on any constitutional issue. Their attention was drawn to a very convenient procedure at present existing in British India whereby, when a question of title is raised in a Revenue Court, a Case can be stated on that point only for the opinion of the Civil Court proceedings in the Revenue Court being suspended until the decision of the Civil Court is given; and they think that the possibility of adopting a procedure of this kind might well be explored. They understand, in particular, that a procedure on these lines would be the procedure most acceptable to the States. The Committee are, however, impressed with the need for discouraging excessive litigation, and recommend therefore that no appeal should lie to the Federal Court, unless the constitutional point in issue has been clearly raised in the Court below.

58. The suggestion that the Federal Court should, for federal purposes, be invested with some kind of advisory jurisdiction, such as that conferred on the Privy Council by Section 4 of the Judicial Committee Act, 1833, met with general approval, and the Com-

mittee adopt the suggestion subject to certain conditions. In the first place, they are clear that the right to refer matters to the Court for an advisory opinion must be vested in the Governor-General; and secondly, they think that no question relating to a State ought to be referred without the consent of that State.

59. The Committee are of opinion that an appeal should not lie from the Federal Court to the Privy Council, except by leave of the Court itself, though the right of any person to petition the Crown for special leave to appeal and the right of the Crown to grant such leave would, of course, be preserved; some delegates were, however, of opinion that the Federal Court should be a final Court of Appeal. There would therefore be no right of appeal to the Privy Council direct from a High Court in any case where an appeal lay to the Federal Court. The Committee desire to emphasise here, in order to prevent any misunderstanding, that any right of appeal from the State Courts to the Federal Court and thence to the Privy Council in constitutional matters will be founded upon the consent of the Princes themselves, as expressed in the Treaties of cession into which they will enter with the Crown as a condition precedent to their entry into the Federation. There can be no question of any assumption by Parliament or by the Crown of a right to subject the States to an appellate jurisdiction otherwise than with their full consent and approval.

60. It will be necessary to provide that Federal, State and Provincial authorities shall accept judgments of the Court as binding upon themselves when they are parties to a dispute before it, and will also enforce the judgments of the Court within their respective territories. It will also be necessary to provide that every Provincial and State Court shall recognise as binding upon it all judgments of the Federal Court.

61. The Committee think that the Court should be created, and its composition and jurisdiction defined, by the Constitution Act itself. They are of opinion that it should consist of a Chief Justice and a fixed maximum number of Puisne Judges, who would be appointed by the Crown, would hold office during good behaviour, would retire at the age of 65, and would be removable before that age only on an Address passed by both Houses of the Legislature, and moved with the fiat of the Federal Advocate General. The question of the salaries and pensions of the Judges is a delicate one. The Committee are clear that the salaries, at whatever figure they may be fixed, should be non-votable and incapable of reduction during a Judge's term of office; and it would be a convenience if the salaries could be fixed by the Constitution Act, or in accordance with some machinery provided by that Act. The Committee have no desire to suggest any extravagant figure, but they are bound to face facts; and they realise that, in the absence of adequate salaries, it is in the highest degree unlikely that the Federation will ever secure the services of Judges of the standing and quality required. They suggest that the matter might be referred to a small committee

for investigation and report at a reasonably early date. With regard to the qualifications of the Federal Court Judges, the Committee suggest that the following should be eligible for appointment:—any barrister or advocate of fifteen years' standing and any person who has been, for not less than five years, a Judge of a High Court or of a State Court, the qualifications for appointment to which are similar to those for a High Court.

62. The seat of the Court should be at Delhi, but power should be given to the Chief Justice, with the consent of the Governor-General, to appoint other places for the sittings of the Court as occasion may require. The Court must also have power to make Rules of Court regulating its procedure; these Rules should, after approval by the Governor-General, have statutory force. The power to regulate the procedure of the Court should include a power to make Rules enabling the Court to sit in more than one Division, if necessary. The appointment of the staff of the Court should be vested in the Chief Justice, acting on the advice of the Public Service Commission; but the number and salaries of the staff must, of course, be subject to the prior approval of the Governor-General.

63. A strong opinion was expressed in the Committee that the time had come for the creation of a Supreme Court for British India to which an appeal should lie from all Provincial High Courts in substitution for a direct appeal to the Privy Council. Appeals from the Court would lie to the Privy Council only with the leave of the Court or by special leave. The creation of such a Court is in the natural course of evolution, and the Committee adopt the suggestion in principle. A difference of opinion, however, manifested itself on the method whereby such a Court should be brought into existence. There was a strong body of opinion amongst the British Indian Delegates to the effect that the Federal Court should be invested with this further jurisdiction, the proposal being that the Court should sit in two Divisions—one dealing with Federal matters and the other with appeals on all other matters from the Provincial High Courts. Other members of the Committee and, generally speaking, the States representatives, dissented from this view, and were of the opinion that there should be a separate Supreme Court for British India on the ground that the Federal Court would be an all-India Court, while the Supreme Court's jurisdiction would be confined to British India; the mass of work with which it would have to cope would obscure its true functions as a Federal Court, and to that extent detract from its position and dignity as a Federal organ. It is no doubt the case that many more appeals would be taken to a Supreme Court situate in India than are at present taken to the Privy Council, and the Committee appreciate the force of this objection. But there would be no difficulty in reducing the appeals to a reasonable number by imposing more stringent restrictions upon the right of appeal. The Committee would deprecate the imposition on the finances of India of the cost of two separate Courts if this can possibly be

avoided, and cannot disregard the possibility of conflicts between them. There is, lastly, at no time in any country a superfluity of the highest judicial talent, and the truer policy appears to them to be to concentrate rather than to dissipate judicial strength.

64. A question of very real difficulty upon which there is a divergence of view, remains to be considered, *viz.*, whether the Constitution Act itself should at once establish a Supreme Court or whether power should be given to the Federal Legislature to establish it either as a separate institution, or by conferring general appellate jurisdiction on the Federal Court as and when it may think proper so to do. The majority of the Committee is impressed with the need for proceeding cautiously in this matter, though recognising that the opportunity should not be lost of settling once and for all the general outline of a Supreme Court scheme. The establishment of a Supreme Court, and the definition of its appellate jurisdiction are, they think, essentially matters for the Constitution Act, and it appears to them that, in the circumstances, it may be advisable to take a middle course. They recommend, therefore, that the Constitution Act should prescribe the jurisdiction and functions of the Supreme Court, and that the Federal Legislature should be given the power to adopt these provisions of the Constitution Act in the future, if it should think fit to do so. The majority of the Committee recommends this method on several grounds. In the first place, the establishment of the Court would in any event require a large increase in the judiciary, and, in their view, it should be left to the Federal Legislature of the future to decide whether the additional expense should be incurred or not. Secondly, the whole subject is one which requires much expert examination, and it may be desirable that experience should first be gained in the working of the Federal Court in its more restricted jurisdiction. Thirdly, the functions of the Federal Court will be of such great importance, especially in the early days of the Federation, that, in the opinion of the majority, it would be unwise to run the risk of either overburdening it prematurely with work, or of weakening its position by setting up in another sphere a Court which might be regarded as a rival.

A substantial minority of the Committee is strongly of the opinion that the establishment of a Supreme Court for British India is a matter of urgent necessity, and that such a Court should be set up by the Constitution Act itself without necessarily waiting until the time when the Federation comes into being.

65. A proposal to invest the Supreme Court above described with jurisdiction to act as a Court of Criminal Appeal for the whole of British India also found a certain measure of support. It is clear that, even if a right of appeal to this Court only in the graver criminal cases were given, the work of the Court, and therefore the number of Judges would be enormously increased. The Committee had not the time at their disposal to enter into a close examination of the question whether, in principle, a Court of Criminal Appeal

for the whole of British India is desirable; and they do not feel themselves able to express any opinion upon the matter, though they recognise its great importance. For the same reason that they hesitate to recommend the immediate establishment by the constitution itself of a Supreme Court for appeals in civil matters from the High Courts of British India, the majority is unable to recommend the immediate establishment of a Court of Criminal Appeal. This matter is one which, in their opinion, must be left to the future Federal Legislature to consider; and if that Legislature should be of opinion that such a Court is required, there will be no difficulty, if it should be thought desirable, in investing the Federal Court, or the separate Supreme Court, as the case may be, with the necessary additional jurisdiction. Some members drew attention to the fact that a Court invested with the various jurisdictions which were suggested in the course of the Committee's discussions would have to consist of probably as many as twenty or thirty Judges, and in all likelihood of many more.

66. The subject of the Provincial High Courts in British India was also touched upon in the course of the Committee's discussions, and they think it right to record their views on one or two points of importance connected with this subject. In the first place, the Committee are of opinion that High Court Judges should continue to be appointed by the Crown. Secondly, they think that the existing law which requires certain proportions of each High Court Bench to be barristers or members of the Indian Civil Service should cease to have effect, though they would maintain the existing qualifications for appointment to the Bench; and they recommend that the office of Chief Justice should be thrown open to any Puisne Judge or any person qualified to be appointed a Puisne Judge. The practice of appointing temporary additional Judges ought, in the opinion of the Committee, to be discontinued.

Signed, on behalf of the Committee,

SANKEY.

St. James's Palace, London.

9th November 1931.

APPENDIX.

Report of the Federal Finance sub-Committee.

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1. The terms of reference of the sub-Committee were as follows:—

"To examine and report upon the general principles upon which the financial resources and obligations of India should be apportioned between the Federation, the British Indian Units jointly and severally, and the States Units."

2. The following Delegates were selected to serve on the sub-Committee:—

Lord Peel (Chairman).
Major Elliot, M.P.,
Mr. Pethick-Lawrence, M.P.,
*Major the Hon. Oliver Stanley, M.P.,
Sir Akbar Hydari,
Sir Mirza Ismail,
Colonel Haksar,
Rao Bahadur Krishnama Chari,
*Mr. Benthall,

* Sir Robert Hamilton, M.P., subsequently took the place of Major Stanley, and Sir C. E. Wood that of Mr. Benthall.

Sir Maneckjee Dadabhoy,
Mr. Iyengar,
Sir Sayed Sultan Ahmed, and
Dr. Shafa'at Ahmed Khan.

3. The sub-Committee met on the 28th, 29th and 30th September, and the 1st, 2nd, 6th, 7th, 8th and 9th October, and has authorised me to present this Report.

4. *Conditions of the Problem.*—In considering the principles upon which the general financial scheme for the new Federation should be framed, we are necessarily at a disadvantage because it is impossible for us, with the time at our disposal, to make even tentative estimates of the probable revenue and expenditure of the Federation and its constituent Units. Any theoretical scheme for the division of resources and obligations should, before being embodied in the constitution, be put to the test of a careful examination of its probable results by some body which is fully equipped for the task. We accordingly recommend that, with the least possible delay after the conclusion of the present Session of this Conference, an Expert Committee should be constituted for the purpose of working out in detail a financial scheme for the Federation,† taking as its starting-point the general proposals contained in our Report (subject, of course, to their acceptance by the Federal Structure Committee and the Conference). The Expert Committee must have for its guidance some general principles of the kind set out below; but it should be free to make alternative suggestions if, on closer examination of the facts, a probability is disclosed that any general principle laid down by us would, in practice, prove unworkable. In addition to the Committee's duty of framing a general scheme, there are also many specific points, some of which we mention below, on which its advice should be sought.

Such a body will necessarily be in a better position than we are to examine estimates of future revenue and expenditure and to take these into account in arriving at its recommendations. Even this Committee, however, will be unable to foresee the future so accurately that its judgment regarding immediate financial prospects can safely be made the basis of a rigid constitutional scheme. The difficulty is particularly acute in the adverse economic circumstances which now prevail, and which seem likely to continue for some time to come. It will therefore be necessary to aim at a considerable degree of elasticity in the financial framework. Whatever success in attaining this object can be achieved, we still consider it important that the Conference, when considering the question of constituent powers, should be specially careful to ensure that amendment of the constitution in this respect is not so hedged with difficulties as to be almost impracticable. Changing industrial and economic conditions, for example, may, at a date earlier than might now be anticipated, make it imperative to modify the financial scheme adopted at the outset.

While we are thus unable to frame a Budget for the Federation or its Units, it is impossible to enunciate even general principles without making an assumption, however rough, as to the financial obligations of the new governments. The provisional classification of subjects suggested by the Federal Structure Committee at the last Session of the Conference involves no change of importance, from a financial point of view, in the functions of the Provinces (or States) and of the government at the Centre (whether in its "Federal" or "Central" aspect). Federation may bring with it certain fresh charges (*e.g.*, expenses of the Federal Court), or possibly, on the other hand, certain administrative economies; but these variations do not appear likely to reach such magnitude as would bring about any fundamental change in the relative positions of the Units and the Centre in regard to financial requirements. Provincial expenditure, more parti-

† *See also* paragraph 26.

cularly on "nation-building" services, may expand into fresh channels, whereas the range of Federal expenditure is more confined. It is essential however, that all the governments should exercise the strictest economy and that their scale of expenditure should be reviewed and reduced to a minimum. But although there may be a natural and a proper tendency for Provincial and States' expenditure to increase, despite economies, and for Federal expenditure perhaps to decrease, it is important to remember that the Federation will have to bear, in the main, the financial burden of any grave crisis, and that it is especially on the credit of the Federal Government that the whole financial stability of India—its constituent parts no less than the Federation—must, in the end, depend. We are therefore bound to point out that there is danger in assuming that in no circumstances will additional burdens fall on the Federal Government.

Bearing the above in mind, we have started from the standpoint—

(1) that it is undesirable to disturb the existing distribution of resources between the various governments in India unless, as we have found in some cases, there are imperative reasons for making a change;

(2) that, at all events to begin with, the Federation and its constituent Units are likely to require all their present resources (and, indeed, to need fresh sources of revenue); so that, on the whole, it is improbable that any considerable head of revenue could be surrendered initially by any of the governments without the acquisition of alternative resources.

With these preliminary observations we now proceed to set forth what we conceive are the principles to be followed.

5. *"Central" Charges.*—It was generally accepted in the Federal Structure sub-Committee at the last Session that the aim of the new constitution should be to eliminate, as far as possible, any "Central" subjects; but, so far as could be foreseen, it seemed likely that a residue of such subjects (notably certain civil and criminal legislation) would remain indefinitely. It appears probable, however, that the ideal will be more easily attained on the financial side "Central" expenditure, broadly speaking. will consist of three categories:—

(1) Expenditure on "Central" Departments.

(2) A share in pre-Federation obligations in respect of civil pensions.

(3) Possibly a share of the service of the pre-Federation debt.

(2) and (3) are, of course, items which will ultimately vanish.

Expenditure under (1) will be simply for those few departments and institutions (*e.g.*, Archæological Department and Zoological Survey) which were not included at the last Session within the category of Federal subjects. It may well be that an agreement could be reached to federalise these items; but, in any case, the expenditure on them is relatively insignificant. In strict theory there should be included among "Central" charges a proportion of the cost of the Federal General Administration expenditure in respect of such "Central" business as "Central" legislation. The amount, however, would probably be so trifling as to make this a needless complication.

As regards (2), the allocation of "Central" civil pension charges (not debited to the Provinces) between Federal and "Central" is a point which should be investigated by the Expert Committee. There seems no reason why the Federation should not be charged in respect of the pensions of officers who were previously employed on duties which, in future, will fall within the scope of Federal activities; but there may be a case for making the balance a "Central" charge.

6. *Pre-Federation Debt.*—The third possible item in the "Central" charges—a share in the service of the pre-Federation debt—raises more

important issues than the other two. The Public Debt of India has been incurred through loans which have not, at the time of their issue, been allocated for expenditure on specific heads. It is certain that, in any case, from the point of view of the investor, the security must remain, as before, the "revenues of India"—that is to say, the future revenues of the Federation and of the Provinces but not of the individual States. No classification of pre-Federation debt as Federal and "Central" for constitutional purposes could be contemplated of such a kind as to affect the position of the lender.

The Departmental Memorandum of the Government of India has attempted to classify the greater part of the total Public Debt as debt covered by commercial or liquid assets together with a few miscellaneous items of a similar character, leaving a residue of Rs. 172 crores which, it is suggested, should be classed as "Central". We think that this classification may be misleading for the following reasons.

The borrowings of governments are in the nature of things, not restricted to what is required for investment in commercial or productive undertakings, and it is probable that no important country, even at the time of its fullest prosperity, has been in a position to show the whole of its debt as covered by assets of this nature. It would be absurd to suggest that every country has therefore been continuously insolvent, as would be the case of a commercial company which showed a deficiency of assets in comparison with liabilities. A country's borrowing is conducted on the security of its credit and of its revenues, actual and potential.

The Government of India, like most other governments, has at times had to increase its debt owing to revenue deficits. Such debt, legitimately incurred in tiding over periods of difficulty or emergency, forms a reasonable charge on the whole undertaking of government, even when not represented by specific tangible assets. On the other hand, large allocations have consistently been made from revenue for the reduction of debt and for capital expenditure. It is doubtful whether any other country could make so favourable a comparison as India between the total volume of its debt and the value of its productive assets.

Even as regards the productive assets included in the Memorandum, it will be observed that the figure against Railways, for instance, is not an estimate of their actual commercial value as a going concern, but represents merely the capital invested. The Railway proceeds in a normal year are sufficient for the payment of a contribution to general revenues of over Rs. 5 crores, in addition to meeting the whole of the interest charges on the Railway debt. The capitalised value of this additional profit, though it cannot be estimated with exactitude, might well amount to as much as Rs. 100 crores.

Again the valuable assets of the Government of India are not limited to those which actually earn profits. The Federal Authority will presumably succeed to the whole of the buildings and public works of all kinds which at present are the property of the Central Government. The replacement value of these is, of course, an enormous sum, though there are no exact data at hand for evaluating it. Further, while such assets do not directly produce revenue, they represent a saving of annual expenditure.

Moreover, although the loans and other obligations are shown as partially offset by certain assets, it will be understood that loans are normally raised for general purposes and not earmarked for specific objects; their proceeds go into a general pool. The particular items of debt cannot, therefore, be set off against individual assets; and it would clearly be impossible to relate the "balance" of Rs. 172 crores, mentioned above, to any particular loan or other obligation.

It therefore seems to us that, if it were found, after investigation by the Expert Committee, that all the obligations were covered by assets, the whole of the pre-Federation debt should be taken over by the Federation.

While, however, this seems to us to be the probable result of a close investigation, we do not rule out the possibility of a finding by that Committee that a certain proportion of the pre-Federation debt should equitably be classified in the first instance as "Central"; that is to say, that its service (including a due proportion of sinking fund charges) should be taken to be a "Central" and not a Federal charge.

The question of post-Federation debt is considered in paragraph 22 below.

7. *Service of "Central" Charges.*—The only important existing source of the Government of India's revenue which is derived solely from British India is Income-tax. The problem of how Income-tax should be treated is discussed more fully in paragraph 15 below; but it is clear that, whatever may be the amount of the "Central" charges discussed in the preceding paragraphs, it should be deducted as a first charge against the Income-tax collected solely from the British Indian Provinces, and against any other revenue collected by the Federal Government but derived solely from British India.

8. *Allocation of Resources between the Federation and its Constituent Units.*—It is obvious that, if there is to be an equitable apportionment of burdens and smooth working of the constitutional machine, the Federal resources should, as far as possible, be confined to revenues derived alike from the inhabitants of the Provinces and of the States, and which can be raised either without any action on the part of the individual States or by an agreement with them of simple character, readily enforceable. This principle implies, very roughly, that the Federal sources of revenue should be confined to "indirect" taxes. If, however, a "direct" tax could be found which complied with the above conditions, it would be highly desirable to include this among the Federal resources, for the following reasons.

The revenue from Customs will inevitably decline if there is an intensification of protective policy, and the profits of indigenous companies (and also, of course, the yield of the Income-tax on these profits) will presumably increase. Moreover, "indirect" taxes tend to impose a relatively heavy burden on the poorer classes, and a Federal system of purely "indirect" taxation might unduly expose the Federal Government to criticism on this ground. We have been informed that federations which began with only "indirect" taxation as a Federal resource have been compelled by force of circumstances to levy a tax on incomes or profits of companies in some form or other; and that, in at least two cases (United States of America and Switzerland), a formal Amendment of the Constitution was necessary for this purpose.

9. *Corporation Tax.*—The most obvious "direct" Federal tax is Income-tax. We think that it would be desirable, if it were possible, that some of the Income-tax receipts in all the Units of the Federation should, in case of necessity, be available as a Federal resource; but we recognise that this is, in general, a development which must be left to the future and depend on free negotiation between the Federal Government and the federating States subsequent to federation.

As regards the Corporation tax (now called the Super-tax on Companies), however, we suggest that, if the necessity of such a reinforcement of Federal revenues is established, this tax should be included in the list of Federal taxes; and we hope that the States will agree to this principle.

If federalisation of the Corporation tax were not accepted by the States, it would continue to be treated as a British Indian source of revenue.

10. *Classification of Revenues.*—In view of the difficulty of classifying taxes in general terms which permit of precise legal interpretation, and of the necessity, in a federation, of leaving no doubt as to where the constitutional power of imposing a certain tax lies, we think the most satisfactory solution would be that the Federal taxes and the Provincial taxes should be fully scheduled. We would suggest the following initial classi-

fication (apart from Income-tax, which is discussed separately in paragraph 15 below):—

Federal.

External Customs, including Export duties.

Salt.

Export Opium.

Excises on articles on which Customs duties are imposed (with the exception of Excises on Alcohol, Narcotics* and Drugs).

Receipts from Federal Railways, Federal Posts and Telegraphs, and other Federal commercial undertaking (see further under paragraph 25 below).

Profits of Federal Currency.

Corporation tax (see paragraph 9 above).

Contributions from Provinces (see paragraph 16 below).

Contributions from States (see paragraph 17 below).

Provincial.

Land revenue.

Excises on Alcohol, Narcotics* and Drugs.

Stamps, with the possible exception of Commercial Stamps (see paragraph 13 below).

Forests.

Provincial commercial undertakings.

Succession duties, if any.

Terminal taxes, if any (see paragraph 13 below).

The first seven taxes in the present First Schedule to the Scheduled Taxes Rules.

We think that these lists should be examined by the Expert Committee, not only in order to review them generally, but also to expand and particularise them, and to include in them all sources of taxation at present used in British India or under contemplation.

11. *Relations of Federal and State Taxation.*—It is necessary, at this stage, to refer to certain forms of taxation now in force in the States, apart from the special cases discussed in paragraph 20, which may conflict with taxes assigned to the Federation, or which may be economically undesirable from the point of view of the Federation as a whole. The first and most important of these is the internal Customs tariff which many States levy at their frontiers. One aim of the Federation, in our opinion, should be the gradual disappearance of any tax, now in force in a State, which is similar in character to a Federal tax and so may impinge on Federal receipts. At the same time we recognise that it may be impossible for the States in question to surrender, either immediately or in the near future, large sources of existing revenue, without the acquisition of fresh resources; nor would it seem to be in general an equitable plan for the Federation to attempt to buy up, so to speak, the existing rights of the States in such a matter. This would simply mean that, in the general interests of economic unity and to facilitate trade, a tax would be imposed on the Federation as a whole in order to relieve the inhabitants of the States. The abolition of these taxes must therefore be left to the discretion of the States, to be effected in course of time as alternative sources of revenue become available. Subject to examination by the Expert Committee, it seems likely that one possible such source is the Terminal tax referred to in paragraph 13.

* It is open to doubt whether "Narcotics" should, for this purpose, include Tobacco.

There may be some instances, *e.g.*, Corporation tax and Tobacco excise, in which States already levy taxes which, under the general scheme, it is suggested, might be federalised. Special adjustments will be necessary to bring these States into line with the Federation.

12. *Unspecified Taxes.*—Under the scheme outlined in paragraph 10 above, the problem of "residuary powers" of taxation, in its ordinary sense, would seem to disappear; and we are left simply with the question, who should have the power of raising taxes hitherto uncontemplated in India. It is obvious that, in dealing with taxes of a nature which is at present unforeseen, the correct solution cannot be to allocate them in advance either finally to the Federation or finally to the constituent Units. A proper decision could only be taken when the nature of the tax was known. There would be great advantages in vesting the Federation with the right to levy such taxes, while empowering it to assign the right to the Units in particular cases, since such a process would be far easier than that of vesting the right in the Units and asking them, when necessary, to surrender it to the Federation. There are, however, constitutional objections to the proposal that the Federation should have power to impose unscheduled taxes on all Units of the Federation; and many of us feel that it is not possible to do more than to provide that the constitutional right to levy any unscheduled tax should rest with the Provinces or States, subject to the condition that the levy of the tax does not conflict with the Federal scheme of taxation.

13. *Taxation—Miscellaneous.*—Sir Walter Layton recommended the use of Terminal taxes as an additional resource for the Provinces. The Government of India, on the other hand, have pointed out the difficulties which beset this proposal. Once again, such complicated issues are raised that expert scrutiny is essential. We agree that, if such taxes were levied, the proceeds should go to the Provinces and the States. In any case we think that both the rates and the general conditions under which such taxes would be imposed should be subject to the control of the Federal Government and Legislature.

Transit duties, whether in the Provinces or in the federating States, should be specifically forbidden.

The Provinces should be debarred from levying internal Customs. (The position as regards the States is examined in paragraph 11 above.)

There is much to be said for federalising Commercial Stamps on the lines of various proposals made in the past; but we have not examined the question sufficiently to justify us in reaching a definite conclusion.

It will be understood that the powers of taxation enjoyed by Provincial Governments or States should be subject to the overriding consideration that they should not be exercised in such a manner as to conflict with the international obligations of the Federal Government under any Commercial Treaty or International Convention.

No form of taxation should, we think, be levied by any Unit of the Federation on the property of the Federal Government. The precise form in which this principle should be expressed should be examined by the Expert Committee.

14. *Grants to Constituent Units.*—It seems important that the constitution should, in one respect, be less rigid than the existing one, under which it has been authoritatively held that there is no power to devote Central resources to the Provinces or Provincial resources to the Centre. It should, we think, be open to the Federal Government, with the assent of the Federal Legislature, not only to make grants to Provinces or States for specified purposes, but also, in the event of its ultimately finding that Federal revenues yield an apparently permanent surplus, to be free, as a possible alternative to reduction of taxation, to allocate the surplus proceeds to the constituent Units of the Federation, both States and British Indian Provinces. It appears desirable that the constitution itself should

lay down the proportions in which funds thus available should be divided among the Units, whether according to their respective revenues, or to population, or to some other criterion—a point on which the Expert Committee will presumably advise.

Whatever the automatic basis for distribution, we consider that it should be subject to an exception in the case of States which impose taxes of a character similar to Federal taxes (*e.g.*, internal Customs); and it should be open to the Federal Government to distribute to such a State its share of the surplus funds only if that State agreed to reduce equivalently the tax at the abolition of which the Federation was aiming.

The reverse process should also be possible. Any Province, with the assent of its Legislature, should be free to make a grant for any purpose to the Federal Government.

15. *Taxes on Income.*—We now take up the question of the treatment of taxes on Income other than Corporation tax, which, we have suggested in paragraph 9 above, should be Federal. As stated in paragraph 7, something may have to be deducted from the proceeds of these taxes, in the first instance, on account of "Central" charges, if any.

We are agreed that such taxes should still be collected from the whole of British India by one centralised administrative service. Most of us are also of the opinion that uniformity of rate should be maintained, since variations of rate may lead to unfortunate economic consequences, such as discrimination between industries in different Provinces. Some of us take the opposite view, both because of the constitutional difficulty mentioned below and because of the difficulty of securing uniformity in all Units. The subject is clearly one to which the Expert Committee should devote much attention.

In any case, we are all of the opinion that the net proceeds should, subject to the special provisions mentioned below, be re-distributed to the Provinces. On any other basis it will be impossible to secure, even ultimately, a uniformity of Federal burdens as between the Provinces and the federating States, or to avoid a clash of conflicting interests in the Federal Legislature when there is a question of raising or lowering the level of taxation. The distribution of the proceeds of Income-tax among the Provinces (even though there may initially be countervailing Contributions to the Federal Government, as proposed in the next paragraph) may also form a very convenient means of alleviating the burden of two or three of the Provinces which, under the present system, are universally admitted to be poorer than the others. With this in view, the Expert Committee should recommend by what criteria the proceeds of Income-tax should be allocated among the Provinces—whether, for example, on the basis of collection or origin, or according to population, or by some other method or combination of methods.

Those of us who recommend that Income-tax should be collected by one agency at a uniform rate to be fixed by the Federal Legislature, though the proceeds are distributed to the Units, recognise that we are, of course, departing from the principle—to which we generally attach considerable importance—that the right to impose and administer a tax should be vested in the authority which receives the proceeds. This seems to us inevitable; but the difficulty might be met, at all events partially if the Federal Finance Minister, before introducing any proposal to vary the Income-tax rate, were required to consult Provincial Finance Ministers. The procedure in the Federal Legislature, when dealing with an Income-tax Bill, should follow the procedure to be laid down for other "Central" legislation affecting directly only British India.

A further point arising in connection with Income-tax, of such complicated nature that we are unable to make a definite recommendation regarding it, is the possibility of empowering individual Provinces, if they so desire, to raise, or appropriate the proceeds of, a tax on agricultural

incomes. We suggest that this point might be referred to the Expert Committee for investigation.

16. *Provincial Contributions.*—We have, subject to certain reservations, proposed the allocation to the Provinces of the proceeds of taxes on Income, without, so far, any corresponding reinforcement for the Federal Government. If the Expert Committee unexpectedly found that Federal resources were such as to give a secure prospect of recurring revenues sufficient to meet this loss immediately (and also a loss in respect of the heads dealt with in paragraph 17 below), many difficulties would, of course, be removed. But, on the provisional basis set out in paragraph 4, we are bound to assume that there may be a substantial Federal deficit, due to the allocation of Income-tax to the Provinces. The deficit, in so far as it arises from the above cause, should, we suggest, be met by Contributions from the Provinces, to be divided between them either on the basis of their respective revenues or of population, or according to some other defined method. The Expert Committee should consider what is the most appropriate basis. This basis need not necessarily be the same as that on which the Income-tax proceeds are distributed. Differentiation between the two methods might be used as a means of partially adjusting the burden on Provinces which are specially hard hit by the existing distribution of resources between them.

We further propose that, not merely should it be the declared object of the Federal Government, as its position improves, to reduce and ultimately extinguish these Contributions, but the constitution should specifically provide for their extinction by the Federal Government by annual stages over a definite period, say, ten or fifteen years.

17. *States' Contributions.*—In the scheme proposed above, the Federal burdens will be spread over all the Units of the Federation in a precisely similar manner except for:—

(*a*) The above-mentioned Contributions from the Provinces until such time as they are finally abolished;

(*b*) such direct or indirect contributions as are, or have been, made by certain States, of a kind which have no counterpart in British India; and

(*c*) varying measures of immunity in respect of Customs and Salt enjoyed by certain States.

We now turn to consider what the States' contributions are, or may be; but, at the outset, we would lay down the general principle that, subject to certain exceptions specified below, the direct or indirect contributions from the States referred to at (*b*) should be wiped out *pari passu* with the Provincial Contributions mentioned in the preceding paragraph.

18. *Cash Contributions from States and Ceded Territories.*—The direct or indirect contributions from the States just referred to may arise, or are alleged to arise, under the following heads:—

(i) cash contributions;

(ii) value of ceded territories;* and

(iii) contributions in kind for Defence by the maintenance of State Forces.

(i) Cash contributions from States (till recently known as tributes) have arisen in many different ways, and it has been impossible for us to examine the cases of individual States. Nevertheless, we think that there is, generally speaking, no place for contributions of a feudal nature under the new Federal Constitution; and only the probability of a lack of Federal resources at the outset prevents our recommending their immediate abolition. We definitely propose that they should be wiped out *pari passu* with the Provincial Contributions discussed in paragraph 16 above. Meanwhile, there seem to us to be certain cases in which real hardship is inflicted by the relative

* This term does not include the leased territory of Berar.

magnitude of the burden of the cash contributions; and we suggest that it might be possible, without excessive loss being thrown on the Federal Government, to remit at once that part of any contribution which is in excess of 5 per cent. of the total revenues of a State. Apart from this, the circumstances under which the contributions have been levied vary so much that it is necessary for the Expert Committee to undertake (what it has been impossible for us to execute) a detailed examination of each individual case, and, with the above general principles in mind, to express an opinion as to what would be equitable treatment for each of the States in question.

(ii) Without the necessary statistics, we are unable to investigate in detail the claim of the States that, through having ceded territory, some of them will be liquidating a liability in respect of Federal burdens. Here again we propose that the Expert Committee should examine the whole question, and pronounce an opinion as to the equities in each individual case.

19. *State Forces.*—(iii) Any attempt to assess the financial value to the Federation of the State Forces would raise many intricate problems into which it has been impossible for us to enter. Close consultation with the Military Authorities and with individual States would be necessary before any solution of this problem could be found. The maintenance and availability of these Forces is at present optional for the States concerned; and we think it likely that, before any credit was given to a State on account of the Force which it maintains, the Federal Authorities would, at all events, wish to prescribe:—

(*a*) That the Forces should be efficient according to a standard of which the Military Authorities should be the judge, and should also be required for purposes connected with the general Defence scheme of India; and

(*b*) that these Forces should, by some permanent arrangement, be made available for services to be determined by the competent Military Authorities.

In any case, we regard this as a separate question which should be taken up between the Military and Financial Authorities of the Federal Government on the one hand, and the individual States on the other. We further think that any financial adjustment should be a matter of bargaining between the parties concerned, and should be treated as a separate matter—not on the lines of (*a*) and (*b*) of paragraph 17.

20. *Maritime States and Kashmir.*—These States, being on the frontiers of India, are in a special position as regards the question of external Customs duties. Here again, we feel that it is impossible to deprive States of revenue of which they are already in possession. One principle which we would lay down is that, in all cases, the Import tariff at the States' Ports should be not less than that at Ports in the rest of India. The question whether Maritme States should agree to the administration of Customs at their Ports being taken over by the Federal Department is obviously one of great importance, but hardly comes within the sphere of our enquiry.

Our general conception of the problem is that the Treaties or agreements, which vary widely in the different cases, must be taken as they stand, and that any decision as to what are the existing rights of a State, in those instances in which they are now in dispute, should be determined separately, with the least possible delay. and not by Expert Committee. We think, however, that the latter should investigate the position in each State on its ascertained existing rights, and should express an opinion as to what commutation it would be worth while for the Federal Government to offer to the State for the extinction of any special privilege which it now enjoys. In doing so, the Committee might allow for any contributions of special value which a State may be making to the Federal resources. With this opinion before them, we think it should be left to the Federal Authorities, if they think fit, to negotiate with each State for the surrender of

existing rights. The Expert Committee should also attempt to determine what, in the absence of any such surrender, would be the amount which Federal revenues lost owing to the existence of the special right of the State; and this valuation should be taken into account by the Federal Government whenever any question arose, as suggested in paragraph 14 above, of the Federation's distributing surplus revenue over the Federal Units.

21. *Emergency Powers of the Federal Government.*—In order to ensure that the Federation is not left resourceless in a grave emergency, and also to secure the object referred to in the next paragraph, we regard it as important that there should be an emergency power in the Federal Government, with the approval of the Federal Legislature, to call for contributions from all the Units of the Federation on some principle of allocation to be based on examination by the Expert Committee.

22. *Borrowing Powers of the Units and the Security of Post-Federation Debt.*—In view of the degree of autonomy with which, we understand, it is likely that Provinces will be clothed, it seems to us that it will probably be inappropriate, at all events as regards internal borrowing, that there should be any power in the Federal Government to exercise complete control over borrowing by a Province. There must apparently be a constitutional right in a Province to raise loans in India upon the security of its own revenues, leaving it, if need be, to learn by experience that a Province with unsatisfactory finances will only be able to borrow, if at all, at extreme rates. We would, however, give the Federal Government a suitably restricted power of control over the time at which Provinces should issue their loans, so as to prevent any inteference with other issues, whether Federal or Provincial. But, although this should be the constitutional position, we think it highly undesirable that, in practice, Provincial borrowings and Federal borrowings should be co-ordinated only to this limited extent; and we feel little doubt that, as hitherto, Provinces will find it desirable to obtain the greater part of their capital requirements through the Government at the Centre.

It has been suggested that loans, both for the Federation itself and for the Units, should be raised by a Federal Loans Board or Council, consisting of representatives of the Federal Government and of the Governments of the Units and of the Reserve Bank. On the other hand, it is argued that an authority of this kind could not raise a loan, since it could not pledge the revenues of the country, though it might be useful in an advisory capacity when the Federal Government was dealing with applications made by Provinces for loans. We are of opinion that these suggestions should be examined by the Expert Committee, which should be asked to make definite recommendations as to the machinery to be set up for arranging loans. In doing so, they will no doubt take into account the experience of Australia and other countries.

In order to secure that loans are raised at the cheapest rates, it is desirable that the security should be as wide as possible; and we therefore suggest that, in the interests both of the Federation and of the Units, all loans raised by the Federal Authority should, in the future, like those of the Government of India in the past, be secured not only on the revenues of the Federation but also on the revenues of the Provinces of British India. To ensure that this is not an unreality, it is necessary to have some such provision as is proposed in the preceding paragraph, under which there is an ultimate right in the Federation to call for contributions from the Units.

There would be no objection to federating Indian States, if they so desired, obtaining funds from the Federal Government on conditions similar to those applying to the Provinces, and being eligible for representation on the Advisory Board, provided that those participating were prepared specifically to recognise this right of the Federation to call for contributions from themselves as well as from other Units.

We are of the opinion that there should be no power in the Units to borrow externally without the consent of the Federal Government.

23. *Provincial Balances.*—We consider that, until a Reserve Bank has been established, the Federal Government should act as banker for the Provincial Governments on a commercial basis. On the establishment of a Reserve Bank, Provincial Balances should be kept with that institution.

24. *Chief Commissioners' Provinces.*—It is suggested that the revenue and expenditure of these areas, though shown in the accounts under separate heads for each area, should fall within the scope of the Federal Budget. Generally speaking, we think that the States have as great an interest in these areas as has British India; and we believe that those areas which are likely to be in deficit will probably be found to be so for Federal reasons, such as special connection with Defence, or, in the case of Delhi, its containing the Federal Capital.

It is, of course, proposed that the North-West Frontier Province, which is now a Chief Commissioner's Province, should become a Governor's Province. There must, however, be a considerable gap between the revenue derived from the ordinary Provincial sources and the normal expenditure of the Province; and it is proposed that this should be filled by a subvention. We contemplate that this subvention should be found from the Federal Budget, as the causes of the Provincial deficit are intimately linked with matters of Federal concern, *viz.*, Defence and Foreign Policy.

25. *Commercial Departments.*—Some of us are of the opinion that the Railways (and possibly other departments, such as Posts and Telegraphs) should be conducted on such a basis as to secure a more complete separation from Federal revenues than is at present the case, and that, after paying interest and meeting the charge at present incurred by the Government of India in respect of reduction of Railway debt, they should keep their own profits and should work on a basis which, in the long run, would yield neither profit nor loss. From our standpoint it is to be noticed that such a plan would involve an important change in the basis of the security for the existing debt; but the proposal is closely connected with that made at the last Session of the Conference, that a Statutory Railway Authority should be established. It thus raises very important constitutional issues which are beyond the province of this sub-Committee and must be fully examined elsewhere.

26. *Proposals regarding Expert Committees.*—The Expert Committee, the appointment of which we have recommended in paragraph 4 above, will, in our view, have a most important rôle to play. We anticipate that it might be difficult to commit to one small body the examination of all the matters in regard to which we have judged that detailed scrutiny will be required.

We therefore advocate a division of the field of enquiry into two parts. The principal object of the first enquiry would be a general survey of the problem and an examination of the questions dealt with in paragraphs 5 to 17 and 21 to 25 of our Report. The second enquiry should relate mainly to the States, and would require considerable historical research in addition to the compilation and scrutiny of statistics. Under this head it will be necessary to review in detail the questions dealt with in paragraphe 17 to 20 of our Report.

We consider that efficiency and promptitude would best be served by allotting these two fields of enquiry to two separate Committees, the work of which might perhaps be co-ordinated by a common Chairman. A precedent for a somewhat similar device can be found in the arrangements made for the work of the Franchise Committee and Functions Committee of 1918-19.

Signed, on behalf of the sub-Committee,

PEEL.

St. James's Palace, London,

9th October, 1931.

PROCEEDINGS OF THE FORTY-SIXTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON MONDAY, THE 16TH NOVEMBER, 1931, AT 11 A.M.

Discussion on Future Procedure.

Chairman: Your Highnesses, and Ladies and Gentlemen, this meeting of the Federal Structure Committee has been summoned in accordance with what I understand was the wish expressed by some of the members of the Minorities Committee. You know—it is an open secret—that for many months a Committee has been sitting in this country which has been endeavouring, but only endeavouring, to produce materials upon which both a Provincial settlement for India should be based and a Federal settlement of the Indian question should be based. That was in pursuance of the Prime Minister's declaration in January last, which was in these terms—I apologise for reading them again, but they are so important that I desire that they should be placed on record at this meeting. The Prime Minister stated:—

> "The view of His Majesty's Government is that responsibility for the government of India should be placed upon the Legislatures, Central and Provincial, with such provisions as may be necessary to guarantee during a period of transition the observance of certain obligations and to meet other special circumstances, and also with such guarantees as are required by minorities to protect their political liberties and rights."

Every word of that declaration stands to-day. As far as I am concerned, that is the object for which I am working, for which I have worked, and for which I intend to continue to work.

During the last nine months we have gone into a very large number of questions. . . . You have expressed your views although you have not come to a final determination on all points, with regard to what the Legislature should be. You have expressed your views, although you have not come to a final determination on some points, as to Federal Finance, and you have expressed your views with regard to a Federal Court. You have come this great distance, you have expressed your views upon that, and for those of us who will have the task of putting your views or the eventual decisions taken by His Majesty's Government into a Bill of Parliament, those views will be of the greatest possible assistance.

* * * * * *

Now, there are certain subjects on which we have not had your views at all. We have not had your views upon what is to be done in relation to Defence and External Relations. They are both problems of the first magnitude and of the first importance. We have not had your views in this Committee upon Commercial Discrimination, and that again is a problem of great magnitude and of

the first importance. Finally, we have not had your views with regard to Finance.

* * * * * *

I propose first of all to take the question of Defence and External Relations. I then propose to take Commercial Discrimination, and I hope, after that, to deal, in your wisdom—I think you will be wise in so dealing with it—very briefly and very generally with the question of Finance. That will not take us very long, and after we have done that, bearing in mind what you have said, the Prime Minister, who has specially come to this meeting, will be able, with the benefit of your views, which he will have heard, to make the declaration which will wind up the Plenary Session.

That is how the matter stands. Let me say one final thing. Nobody need be committed to anything. All we want is an indication of view, and therefore the matter I am going to put before you now is this—that we should this morning have a discussion upon the Defence and External Relations. When that discussion is over, I should like to take the question of Commercial Discrimination, and when that finally is over I should like you to indicate your views very, very generally on Finance, so that the Prime Minister may have the opportunity of seeing and considering your views and when he has seen and considered them, to make the final statement to you at the Plenary Session.

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Mr. Ramsay MacDonald: As I said on Friday at the meeting of the Minorities Committee, the Government is very anxious that these subjects should be passed under review by this Committee as the other subjects have been passed. It is really not anything that the Government has done that seems to bring this Committee to an end. It is very much against the desire of the Government that that should be so. Our friends here have told us—and I think very reasonably—that it is impossible for them to stay for an indefinite period. But it does fill me with very disturbed feelings that the Conference should disperse without a survey of this question. I understand that there has been some reluctance on the part of the Committee as a united whole to discuss some of these matters, not on their own merits at all, but on account of certain things, like a communal settlement, being still unknown. I would like the members of this Committee not to allow that to keep them from discussing the full programme that the Government has put before the Committee. They can make their position perfectly clear, I think, that all they do now is with reserve; that until this other matter is settled they must take part in discussions with that reserve in their minds. I think that would safeguard them sufficiently, if I might presume to express that opinion, but it would enable the Conference to do its work before it goes. I want to make it perfectly clear that it is the Government's desire—their very strong desire—that your

opinion should be expressed on these subjects in just the same way as you have expressed your opinions on other subjects that have been discussed here. I need not say anything more, but repeat that we shall be very disappointed indeed if these subjects are not discussed.

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Mr. Jinnah: I have no hesitation in saying here that the Muhammadans are as ready as anyone round this table or anyone in India to further the constitutional advance of India, which we wish as strongly as anyone else. That is not the question that is troubling us. I am much obliged to the Prime Minister for putting the point he has put in the way in which he put it. My difficulty, and the difficulty of the four of us here who happen to be on this Committee, is this, that all through this Conference we have had collective responsibility on the part of our Delegation. I said from the start, of course, that we should bear in mind not only what the Prime Minister has said, and what you have said, and what is uppermost in the minds of many of our colleagues here. We do not wish to create any difficulties which we can possibly help, but I beg you to allow us to go back to our Delegation and consult them. I think we may—let us hope we may—then be able to meet you and help you in the discussion of the four subjects that you have already mentioned.

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(*The Committee adjourned at 11-35 a.m. and resumed at 2-15 p.m.*)

Mr. Jinnah: My Lord Chancellor, I am authorised on behalf of the Muslim Delegation to state that under the circumstances mentioned by you and explained to us we are willing that the discussion on the four matters that were mentioned by you may be proceeded with; but we wish to make it clear that we reserve to ourselves, and we think that it is an essential and vital condition, that until and unless the Muslim demands and the safeguards are incorporated in the constitution it will not be acceptable to us.

Sir Muhammad Shafi: Lord Chancellor, with your permission I desire to add a few words to what has just been said by my friend Mr. Jinnah. At the very first Plenary Session of this Conference on the 18th November last, speaking on behalf of the Muslim Delegation, I said:—

> "Now that we have met in order to try to find that solution, it is my business as spokesman to-day of my community, of the Muslim group, to tell you what we, the representatives of the Muslim community in this Conference, think. Our position is very simple; to repeat what I said in the Viceregal Lodge at Delhi in November, 1924, we want our countrymen in India to rise to that stature to which other people have risen in their own countries. We want

India to attain Dominion Status as an equal partner in the British Commonwealth of Nations."

And I added:—

"At the same time it is perfectly natural for the seventy-one millions of His Majesty's Mussulman subjects to insist upon this, that in the constitutional and administrative evolution of India they must have their legitimate share both in the Provincial and in the Central Government."

This was our position at the very commencement of this Conference; this is our position to-day; and, therefore, while we have no objection whatever to the discussion of the four subjects named by you, Sir, we still insist that, whatever the constitution which may ultimately be framed for India, Muslim interests, the interests of the eighty millions of His Majesty's subjects, must be safeguarded; those safeguards must be included in the constitution.

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Chairman: I should like to express my personal thanks to the two individuals who have just spoken, Mr. Jinnah and Sir Muhammad Shafi. It is a very great help to me personally in drawing up the future constitution to have your sanction to go on with these, and I desire to express to you my thanks. Forgive me for saying so quite bluntly; if I may, I would also like to say that I think you have shown a very great example to this Committee and the whole Conference in the very reasonable attitude you have adopted this afternoon. I am sure it is an attitude which not only ought to be followed, but will be followed, by everyone. You have both expressed that desire and I know it to be perfectly sincere because I have had the honour of conversations with you personally. Your desire is to do the best you can in the present difficulty; but you are entitled to protect your own interest and you would be foolish not to do so.

You have referred—I took down the words—to your legitimate claims, and so on. As far as I am concerned you are preaching to the converted. I am going to see, as far as one individual can, that everybody is properly protected and that the legitimate claims of everybody are placed upon record. As far as I am concerned, if you will allow me to say it again, no document will leave my hands until I am satisfied that not only you but all of you are properly protected.

Forgive me for saying it again, but I think you have shown a most conciliatory spirit. I hope it is a spirit which will be followed. It is an example to everybody else, because all of us have the same thing in view, the ultimate success and prosperity of India. Let me thank both you gentlemen for what you have said.

Dr. Ambedkar: Before the discussion begins, I should like to make the position of the Depressed Classes clear. I am only going to say a word, but what I want to say is that the position of the

Depressed Classes has been made clear all along; I do not think any member of this Committee is unaware of the fact that I have all along said that, although we are willing to consider the question of the establishment of responsible government for India, we will not consent to the establishment of such government unless the Depressed Classes of India, who number about sixty millions of people, are protected in a proper manner.

The protection which the Depressed Classes want we have laid down in the various memoranda we have circulated to the Conference, and I should like to make it clear, and I think there is far greater necessity for making it clear now, in view of certain developments regarding the minorities questions, that I for one, although I do not wish to raise any difficulty with regard to the discussion of the subjects which Your Lordship has placed before us, will not be a party to any constitution unless the claims of the Depressed Classes are satisfied and unless they are incorporated in the constitution. I am not prepared to take the promise or the word or the goodwill of any individual or set of individuals that the Depressed Classes will be protected hereafter.

The claims of the Depressed Classes is that they must have political safeguards, and those safeguards must be put into the constitution and form part of it. With that proviso—which, as I say, is a fundamental one—we are prepared to discuss these subjects.

Sardar Ujjal Singh: Lord Chancellor, I have not adopted the attitude of obstruction in this Committee, not because I am not keen about the protection of the interests of my community, but because I thought that we should go on with the work of this Committee uninterruptedly, in the hope that we should later on come to an agreement on this most difficult problem; and even if we could not come to any agreement, I thought the Government would have to decide this question, and the Government will take into consideration the just claims of every community.

In that spirit we have been discussing the problem of Provincial autonomy, and in that spirit, I believe, we discussed this very question of the responsibility at the Centre on the last occasion in this very Committee. Can anyone imagine that we can introduce and work Provincial autonomy without a proper solution of the communal question? As a matter of fact, I feel that when there is complete Provincial autonomy and law and order are transferred to a responsible Minister, the minorities in the Provinces take a tremendous risk, and their interests require all the more to be protected. But, as I say, I have been discussing these questions in the hope that we would come to some agreement, and that there will be some solution of this problem whereby the interests of my community will be fully protected. But I must point out that if the interests of the Sikh community are not fully protected they will not accept any constitution.

Mr. Gavin Jones: I have been asked to say that our community stands in the same position in this respect as the other minorities.

Defence.

Sir Tej Bahadur Sapru: Perhaps Your Lordship will allow me to begin my speech with an expression of our thanks, very genuine and sincere, to the Prime Minister, to Your Lordship, and to the other members of the British Delegation, who have helped us in a most material degree this morning in clearing the air.

May I also venture to convey across the table to Sir Muhammad Shafi and Mr. Jinnah our sense of appreciation of the way in which they have responded to the general desire that we should go on with the discussion of these vital questions, upon which hangs the future not merely of Hindu India, but of India as a whole, whose good we all have at heart.

If Your Lordship will permit me on this occasion, which I take to be the turning point in the history of this Conference, to make a confession of my political faith, I will say that I have a strong and unshaken belief that no constitution that you may devise or that we may devise has any chance of success in India unless the position of the minorities is completely and adequately safeguarded. With the desire of the minorities—and in that expression I would particularly include the Depressed Classes—to seek the protection of their interests, I have completely associated myself, and I see absolutely no reason why there should be on the part of men who hold my views and convictions any weakening in that respect.

Frankly, I think that we owe it to ourselves, if our nationalism is not merely a figure of speech, but a genuine deep-rooted sentiment, that we should tell the minorities and the Depressed Classes that our future is bound up with their future, that we cannot advance at all without carrying them with us, and it is in that spirit, that in spite of the many happenings during the last few weeks which have given rise to a sense of despondency, I should like to approach our future task.

We are grateful, My Lord, to Mr. Wedgwood Benn for reminding us this morning of the terms on which this Round Table Conference was called. The policy of His Majesty's Government was—and we have been repeatedly assured continues to be—that the method of approach to the solution of these big problems should be one of negotiation across this table, negotiation not only between one section of Indian opinion and another section of Indian opinion, but between all sections of Indian opinion on the one side and British opinion on the other side. If the task was one of imposing a constitution on India, not as we conceived it should be, but as you, the British Cabinet or British Parliament, conceived it should be, I think your task would be, from your point of view, infinitely easier; but the real difficulty arises when we have got to reconcile conflicting views, when we have got to find a way out of conflicting convictions equally strongly held on all sides; and I do hope that we shall not deviate in any degree or measure from the part which was prescribed for us last year, and which we all desire to pursue.

Since the commencement of this Session of the Round Table Conference we have been considering some momentous questions. Let us not overlook or underestimate the importance of the questions which we have already considered and with regard to which we have arrived more or less at some conclusions. As Your Lordship knows, we have discussed the question of the composition of the Federal Legislature, and I venture to submit—I hope I am not putting it too high—that a very considerable measure of agreement has been arrived at so far as the composition of the Legislature is concerned. It is perfectly true that there remain some loose ends to tie up, but I venture to think that the outstanding points with regard to the composition of the Legislature, the outstanding issues between the Indian States on the one side and British India on the other side, are not of such a character that we can honestly say that we do not foresee an amicable settlement in regard to those three or four questions. I therefore claim that so far as that part of the work is concerned it has been eminently successful. Similarly I can claim that we have arrived at a considerable measure of success in dealing with the questions of Federal Finance, the Federal Court and the Supreme Court of British India. Our work hitherto done would have remained incomplete if we had dispersed without discussing, without coming to an agreement upon, the vital question, the pivotal question I would say, of responsibility at the Centre, or without discussing those safeguards in which we are all interested.

Your Lordship will remember that last year, when we tried to sketch out the general outlines of the constitution, we attached considerable importance, in the course of our discussions to these three questions which you prescribed for us this morning. The question of the discriminatory legislation was one in which the Europeans were vitally interested. We arrived at a tentative conclusion in regard to that matter last year which more or less satisfied the parties concerned, and I see absolutely no reason why, if the task is approached to-day in the proper spirit, we should not arrive at final conclusions in regard to that matter this year which would satisfy all the parties concerned. The next question in which we were interested last year, and which continues to occupy the same important position, is the question of financial safeguards. I will not go into that question now; perhaps I shall have an opportunity of speaking on it when that question is taken up by Your Lordship; but I will address myself to the last question of great importance, and that is the question of self-defence, which is immediately the issue before us.

Mr. Sastri: " Self-defence "?

Sir Tej Bahadur Sapru: I mean the Army.

Mr. Sastri: National defence.

Sir Tej Bahadur Sapru: That is a legal expression—self-defence.

My Lord, so far as the question of the Army is concerned I would like to present it in this way. At the present moment the true constitutional position with regard to the Army, as it appears

to me, is that the Army is maintained by the Crown in India. Excepting for the fact that you find in the existing constitution provisions with regard to the appointment of the Commander-in-Chief, or rather with regard to his position in the Executive Council, and also provisions laying down that the Civil and Military Government of India rests in the Governor-General subject to the control of the Secretary of State, there are no special provisions to be found with regard to the Army in the Government of India Act. Therefore I venture to think that the true view to take is that the Army is maintained by the Crown in the exercise of its prerogative in India, but the money required for the upkeep of that Army is found by the Indian Legislature out of the general taxes. Now, so far as that is concerned I will invite your Lordship's attention to a very important section of the Government of India Act.

Chairman: Is Section 65 (2) the one with regard to the Army being in that position?

Sir Tej Bahadur Sapru: I am just going to refer to that, My Lord.

Chairman: Thank you.

Sir Tej Bahadur Sapru: The Section which deals with this matter is Section 67A, and I will invite your Lordship's attention to that. Section 67A (3) says:—

> "The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either Chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs."

Then if you go on in the same clause you will find that amongst the protected subjects is "defence."

Chairman: Yes, that is (v) (c).

Sir Tej Bahadur Sapru: Yes, My Lord. Now further Your Lordship will be pleased to see that so far as the discussion of the subject relating to the Army is concerned, Clause (3) of Section 67A provides that that shall not be open to discussion also without the Governor-General's direction. I will read that again, My Lord:—

> "nor shall they be open to discussion by either Chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs."

Chairman: Will you help me with this, Sir Tej, merely as a matter of detail? Has there ever been an occasion when the Governor-General did direct?

Sir Tej Bahadur Sapru: I was just going to come to that, My Lord. The interpretation of this Section has given rise to a great deal of difficulty in the Legislative Department of the Government of India and also, I believe, at this end. In point of fact, so far

as I know—and I should like to refer the matter to Sir Muhammad Shafi, who succeeded me in that portfolio—I am not aware that any particular order was passed by the Governor-General at that time throwing it open for discussion, any more than that the Governor-General ever prevented the discussion of it. I refer the point also to Lord Reading. In actual practice the matter does come up for discussion in the Indian Legislature at the time when the supply is demanded.

Lord Reading: I can speak only for the time when I was there. There was always an order that discussions should be allowed.

Mr. Iyengar: Every year a notification is published that the Governor-General has permitted discussion of the subject.

Lord Reading: Every year.

Sir Tej Bahadur Sapru: I stand corrected. The position is, therefore, that without the permission of the Governor-General matters relating to the Army cannot even be discussed in the Legislature, and certainly, as the Statute itself shows, they are outside the vote of the Legislature.

Now, during the last ten years or so there are three landmarks which can be pointed out in regard to the Army in India. First of all, as I will remind Lord Reading, he appointed a Committee which was presided over by that very distinguished soldier, Lord Rawlinson, who was at that time the Commander-in-Chief, and on that Committee both my friend Sir Muhammad Shafi and I had the honour of serving as members.

Sir Muhammad Shafi: And Sir Denys Bray.

Sir Tej Bahadur Sapru: And probably there are some members of this Round Table Conference who appeared as witnesses before that Committee. That Committee submitted a Report which until last year at any rate never saw the light of day.

That Committee was followed by another Committee, a secret Committee of which the outside world knew nothing until last year. I am referring to the Committee presided over by General Shea. After that we had another Committee presided over by General Skeen, and that Committee submitted a Report which in Indian political parlance is now known as the Skeen Committee's Report. My friend, Mr. Jinnah, was a member of that Committee, and I believe there were one or two other members of this Round Table Conference who served on that Committee.

Sir Muhammad Shafi: And the Shea Committee Report was never placed before the Skeen Committee.

Sir Tej Bahadur Sapru: As Sir Muhammad Shafi says, that Report was never placed before the Skeen Committee, a fact which was elicited last year during the sitting of this Round Table Conference.

Now, while all this was going on, a scheme was evolved which is generally known as the Eight Units Scheme; that is to say, eight

units were reserved for the experiment of Indianisation so far as the officers attached to them were concerned. I freely confess that I did not believe in the merits of that Eight Units Scheme, even at the time when the Government of India were in correspondence with the Secretary of State about it; and, with all apologies to those who believe or who have believed in that scheme, I confess that ten years' experience does not enable me to alter my position or my view with regard to that scheme.

Now, as Your Lordship knows very well, right up to the year 1919, or 1920, there was not a single Indian officer who had the privilege and honour of holding a King's Commission in the Army.

It is true that during the last ten years a number of Indians have been taken into the higher ranks of the Army, men who have received education at Sandhurst or have otherwise qualified themselves for that position. Without pledging myself to accuracy, I believe the number of such men in the Indian Army does not exceed about seventy-one at the present moment.

We have, therefore, all along felt that unless and until some definite steps were taken, some definite policy of a continuous character adopted which aimed at a speedy Indianisation of the Army, it would be impossible for us to say that in the matter of defence we were as self-contained as are some of the Dominions in the British Commonwealth of Nations. The whole problem, therefore, is how best we can secure that end, how soon we can reach that stage.

I realise that the Army is a very delicate machinery, and I realise the danger of laying upon it inexperienced hands or trying experiments with it. No one is more conscious of the danger involved in so doing than I am. At the same time, it would be idle to pretend that there was not a feeling present in our minds that so far as the Indianisation of the Army is concerned, the process has neither been so continuous nor so speedy as we should have liked it to be.

Therefore, the immediate problem before us is, if we are going to get responsible Government at the Centre, what we are to do with the Army. Is it to come within the purview of the Federal Government or is it to remain outside its purview? Your Lordship will remember that last year in the course of discussions I ventured to point out that according to the scheme we were then considering, the Army and the External Relations would be federal subjects from the very start, though as a matter of agreement and arrangement during the period of transition they would be outside the control of popular legislation, and that observation of mine made last year was agreed to by Your Lordship.

Well, there are two possible views which can be taken with regard to the Army. One view which is put forward by what I may call the more advanced section of Indian politicians, is that the Indian Army would be a subject from the very start within the control and within the purview of the Indian Legislature, that

there should be an Indian Member of the Army, who should be from the commencement of the new constitution responsible to the Indian Legislature. The exponents of this view would perhaps be prepared to accept certain limitations on the power of the Legislature in relation to this Member.

The other view is that during the period of transition you may have an Indian Member—indeed, you must have an Indian Member —who shall acquire inside knowledge and experience of the Army administration, who shall cultivate a direct knowledge of the problems connected with the organisation of the Army, but who shall, under the Statute, continue responsible to the Crown—that is to say, to the Governor-General. This Army Member will be a member of the general Cabinet; he will take part in all the proceedings of the Cabinet, put forward his schemes before the Cabinet, invite discussion on those schemes on questions of policy affecting the Army, and similarly take part in the discussions relating to subjects outside his own jurisdiction, but so far as his ultimate responsibility is concerned, that will be to the Governor-General and not to the Indian Legislature. That was the view that I put forward last year. It was open to the objection that the position of the Army Member, such as I contemplated it to be, would be an anomalous one. The fact that it would be an anomalous one is, to my mind, not an effective answer to the argument that I advanced. Frankly, when you have got to provide for a period of transition— and it all depends on whether you want a period of transition or not —you must be prepared to put up with a certain amount of anomaly. You cannot have your constitution perfectly logical during the period of transition. These were the views that I formulated last year, and I do stand by those views now.

Coming to the other alternative, which I attributed to the more advanced school, I ventured to express my opinion, most humbly but very clearly, that you cannot make the Army Member partly responsible to the Governor-General and partly responsible to the Legislature. There is no such thing as divided responsibility in a matter of that character. In other words, if I may sum up the position, it really comes to this. I am suggesting a scheme of limited responsibility of the Governor-General. Those who differ from me suggest a limited responsibility of the Minister in charge of the Army. The question, therefore, is which of the two schemes shall be accepted and what are the contents of that scheme. I would put it in this way. I would have an Indian Army Member in charge of the Army portfolio.

So far as the technical side of the Army is concerned, so far as questions relating to discipline and drill and mobilisation are concerned, they will be matters within the jurisdiction of a Commander-in-Chief who shall be appointed by the Crown and who, for many years to come, is bound to be a British officer of high rank. Possibly in order to give your Army Member a fair chance you might associate with him an advisory council; but these are questions of detail, and I will leave them aside.

This Army Member will be responsible to the Governor-General, but he cannot be responsible to the Governor-General, and indeed he cannot discharge his responsibility to the Governor-General, unless and until we make some adequate provision for supply. And I do suggest that it should not be beyond the possibility of statesmanship to come to an arrangement with regard to that matter. My concrete suggestion, therefore, is that you must arrive at a basic figure which may be necessary for the expenditure of the Army for the next five, six or seven years. That basic figure may be arrived at by mutual discussion among members of a committee which you may appoint now, and when that has been arrived at, let that be the basis of a contract between the Governor-General and the future Government of India. Indeed, I see that it will probably be necessary for you to make some special provision to get over the difficulty of the first year of the new constitution, and I therefore suggest that before that new constitution comes into force power should be given to the Governor-General now to enter into that contract, and that the new Government should inherit that as a part of the constitution. Let that basic figure be revised from time to time by a committee consisting of members of the future Federal Government and the representatives of the Crown, and let there be a provision that the figures arrived at from time to time shall form the basis of contract.

Now, I do not think that even from a strictly constitutional point of view it could be said that such an arrangement would be inconsistent with the dignity or powers of a responsible Legislature, because it is open to a responsible Legislature to come to an arrangement by agreement with the Governor-General for the protection and safety of India.

Chairman: Would you kindly help me with regard to this? I am quite following, and with very great interest, what you are saying, and I have no doubt you are coming to this. I quite follow what you say with regard to this basic figure for the next five, six or seven years. But would you mind just dealing with one matter which I hope will not arise and might not arise? What about a sudden emergency?

Sir Tej Bahadur Sapru: I am going to deal with that presently, My Lord.

Chairman: Thank you.

Sir Tej Bahadur Sapru: This arrangement that I have just now put before Your Lordship and before my colleagues only relates to normal expenditure.

Chairman: Yes, that is right.

Sir Tej Bahadur Sapru: But we must be prepared to provide for unforeseen contingencies.

Chairman: Yes, for emergencies.

Sir Tej Bahadur Sapru: For emergencies. During this very period when this contractual system may be in force, clouds may

appear on the Indian frontier, trouble may arise for which no provision has been made in the Budget, and I do suggest that we must give special power to the Governor-General to meet these emergencies during the period of the transition. We ought not to hesitate in giving that power to the Governor-General because, fortunately for us, these emergencies do not arise on every day of our life in India.

Chairman: No.

Sir Tej Bahadur Sapru: Life otherwise would be intolerable. Now, it will be noticed that all this arrangement that I have suggested is strictly limited to the period of transition. How long that period of transition will be, what steps we shall take to curtail that period of transition, is a different question. Much will depend upon what steps we take to bring into existence the proper organisation or the proper educational institutions for the training of our officers in every branch of service.

Chairman: Would you forgive me for again interrupting you, so that I may get it in my mind? You are speaking of these clouds. Of course I quite understand what you mean; a cloud no bigger than a man's hand, as we know, may develop into a storm.

Sir Tej Bahadur Sapru: Yes.

Chairman: And then I quite agree with you that the Governor-General's powers on an emergency arise. I suppose it would be for him to judge when the emergency does arise?

Sir Tej Bahadur Sapru: Of course.

Chairman: Yes, thank you.

Sir Tej Bahadur Sapru: Under the system that I am contemplating, although constitutionally the power will rest with the Governor-General, yet I imagine that no Governor-General will entirely depend upon constitutional powers and ignore the advice of those who will be associated with him.

Well, My Lord, that is the provision that I would make for the financial security of the Army. There are, however, other equally vital questions connected with the Army, and some of those I propose to take up now.

Mr. Joshi: Does Sir Tej Bahadur Sapru think that no part at all of the Army Budget would be votable? Does he propose that the control of the Viceroy should be exercised by means of the power of certification of the grants, or that there should be no voting at all?

Sir Tej Bahadur Sapru: I will deal with that, if you will kindly bear with me.

I am coming now to some of the other points. As Your Lordship knows, the opinion is held very strongly in certain quarters—I do not justify that opinion any more than I attack it; I am only stating a fact—that the size of the Indian Army is such as to require careful consideration. In other words, it is held that the Indian Army, as

it is at present, is much too large for the needs of the country, and that there is room for its reduction.

Now, I express no opinion on that question one way or the other at the present moment, and I certainly do think that we shall be better able to deal with a question of this character when the new constitution has been established, when the new Army Member has been installed in his position, when he has received proper advice and has had access to information and knowledge which is denied to every one of us who are outside the charmed circle of the Government. I should give the Army Member of the future some time to evolve a policy of his own in regard to the size of the Army, then to discuss the matter with the Governor-General, then to cultivate the opinion of the Legislature in his own favour and to cultivate the opinion of the country, and then as a responsible Minister—that is to say, as a Minister responsible to the Crown—he should raise the question with His Majesty's Government here.

That is the plan that I would propose to follow. If I were to raise the question of the size of the Army at present, and if I were to put forward the argument that in my opinion one hundred and seventy thousand men are not necessary for the Indian Army, but that only one hundred and fifty thousand men are needed, and if I were asked why one hundred and fifty thousand and why not one hundred and forty thousand, frankly I should not be able to justify my position; I have not the necessary knowledge, the necessary facts, and the necessary information about those matters.

The position will be quite different, however, when the question is handled by a responsible Minister who has had access to all that information which is denied now to the outside world, and who will be prepared to come, with the position belonging to him, and say, "I am ready to take the responsibility for the Army, and I am ready to assure you that the Indian Legislature is prepared to take the responsibility for the Army." You cannot then ignore his advice and his demands in the same manner in which you may possibly ignore our advice in this matter now.

I would also like to dispose of another question connected with the size of the Indian Army, namely, that relating to the British troops in India. There has been a demand for some time past by Indian opinion that there should be a policy of progressive reduction of British troops in India on economic and financial grounds. That question was also considered, so far as I recollect, by the Rawlinson Committee. I would say that it is not enough for the Government of India to tell us that during the last ten or twelve years they have reduced the British troops by ten thousand or fifteen thousand. What I would say is that there must be a continuous policy, subject, no doubt, to over-riding considerations of general safety. The policy must be one of a continuous character. It must be steadily pursued, and it must not be varied from year to year, unless, of course, as I have said, over-riding considerations come in.

It is perfectly true that during the last two or three months the Finance Member of the Government of India has announced a reduction of military expenditure of four crores of rupees. Well, he would not be an expert, whether on the military or other side of life, who did not claim that in regard to matters within his specialised sphere he alone was right and everybody else was wrong. I do not, therefore, blame the military experts if they hold and strongly hold that the reduction of military expenditure has arrived at a point beyond which it would be dangerous to go. Personally speaking, I am not satisfied with regard to that. I certainly think that there is considerable room for reduction, and whether you like it or not, the size of the Army must be determined by the capacity of the people to pay. Indian finances are, at the present moment, in a bad condition. You have raised such heavy taxation during the last six months, not with the willing consent of the people, but in spite of their protests, that you dare not go on with this system for a very long time without giving Indian opinion an effective voice in the matter of taxation, and without effecting economies of a substantial character. By seeking to protect India with an Army of a size entailing such heavy expenditure, you may endanger the very object you have in view. Therefore, I do say that this question will have to be tackled very seriously, but I also say that for laymen like myself, and, if I may add, laymen like Mr. Gandhi and Pandit Malaviya who will presumably speak on this question, it would be extremely dangerous to express themselves dogmatically at the present moment. I have enough patience to let the question rest for a year or two, and be raised by a Minister responsible to the Crown, whose advice neither His Majesty's Government nor the very cautious India Office dare ignore. Therefore I do say that it must be distinctly understood that we want an Indian Member of the Army, who, though responsible to the Crown, will be competent to raise these questions with you whenever he may feel himself equal to doing so, after studying all such material as may be laid before him, and after receiving such expert advice as may be available.

There are just one or two matters of a less difficult character with which I will deal now, and then I will pass on to the question of Indianisation. One of the things that I should like to be laid down definitely beyond all dispute now is that the ranks of the Indian Army shall be open to all classes of people in India. My Lord, I will ask you to compare your policy of recruitment now with the policy of recruitment which obtained in India in the days of the East India Company. At that time there was no bar against anyone. This division of the population of India into martial and non-martial is an arbitrary division which has arisen owing to the political exigencies in the last fifty or sixty years, and I see no reason why any man of any caste or of any religion should be debarred from entering the Army provided he satisfies the necessary conditions required for an army career. I would place no ban on

members of the Depressed Classes; indeed, I ask you to open the ranks of the Army to the Depressed Classes.

Passing to the next point, what I will say is this—that at the present moment it is open to you to remove the Indian troops and also the British troops from India to any part of the British Empire without ever referring the matter to the Indian Legislature. All that the Statute requires is that if the Indian finances, the Indian revenues, are made responsible for expenditure incurred outside India, then the sanction of Parliament will be obtained, but there is nothing to prevent you from sending our troops to Mesopotamia, Palestine or any other part of the world where Empire exigencies require this to be done, and, indeed, this was done during the war, but of course that was a different situation; Imperial needs at that time were of a supreme character, and I am not drawing any analogies from that, but I do suggest that in future the law must be made absolutely clear that so far as the Indian section of the Indian Army is concerned, although the responsibility during the period of transition for the Army may remain with the Governor-General, the Indian Army shall not be sent outside India without the consent of the Indian Government or the Indian Legislature. I say nothing with regard to the British section of the Indian Army, because that stands on a separate footing altogether, that is ultimately responsible to the British Parliament here, and, indeed, the British Parliament cannot divest itself of its responsibility so far as the British section of the Army is concerned.

I shall then pass on to the last question connected with the Army with which I propose to deal, and that is with regard to military schools, colleges, and institutions. The sub-Committee of this Conference which was appointed last year went into this question and indicated its general policy in the Report associated with the name of Mr. Thomas. In accordance with that recommendation a Committee was appointed in India, I believe in March last, and that Committee has submitted a Report. Let me tell you frankly that Indian opinion is not satisfied with the Chetwode Report. We think that the rate of progress prescribed by that Report does not meet the requirements of the country, and we feel that it does not reflect the spirit of the recommendations of the Thomas Committee held last year here, and, therefore, I do say that the Statute must lay an obligation on the Governor-General which will be discharged through this Army Member that he shall maintain certain military institutions for the training for the higher ranks of the Army of Indian officers. Whether you will make the Budget so far as these institutions are concerned open to the vote of the Legislature or whether you will keep this part of the Budget also out of the purview of the Legislature is a question on which I admit there can be two opinions, and so far as I am concerned I will express no opinion until I have heard the opinion of my colleagues in regard to this matter.

Now, My Lord, I will just remind the Committee of the recommendations of the Committee appointed last year here. The three important recommendations were as follows:—

> "That immediate steps be taken to increase substantially the rate of Indianisation in the Indian Army to make it commensurate with the main object in view, having regard to all relevant considerations, such as the maintenance of the requisite standard of efficiency. (Mr. Jinnah dissented, and desired a clear indication of the pace of Indianisation.)"

Chairman: This is page 62 of our Report.

Sir Tej Bahadur Sapru: Now, before I pass to the second recommendation, I personally hold that the pace of Indianisation may be slow in the beginning, but as time goes on it will increase very substantially. It will much depend upon the amount of interest that we take in developing our military institutions and upon the policy of Indianisation that will be evolved by the Indian Member of the Army and that may be supported by the Governor-General. I am quite aware that according to the Rawlinson Committee the period prescribed was, I believe, thirty years or twenty-eight years. Well, nearly nine years have since expired, and nothing has been done really of a substantial character so far as that recommendation was concerned. Speaking for myself, I should not like to commit myself to any period, twenty-five years or twenty-eight years or twenty years, because I know and I feel that, when once the proper organisation has been brought into existence, the rate of progress will be—whether we like it or not, whether the British people like it or not—much more quick than we imagine it to be. It is for that reason that I am not going to commit myself to any particular period. Of course, it would be wrong to infer that I suggest that the rate of progress may be fifty years or sixty years or seventy years. My answer to that is very simple; Indian sentiment will be the surest safeguard against such delay, intentional or unintentional. But I do not want to bind myself down to any period of twenty-five years or twenty-eight years at this particular moment.

Now, My Lord, the second recommendation of that Committee was:—

> "That in order to give effect to (*a*) a Training College in India be established at the earliest possible moment, in order to train candidates for commissions in all arms of the Indian defence services. This College would also train prospective officers of the Indian State Forces. Indian Cadets should, however, continue to be eligible for admission as at present to Sandhurst, Woolwich, and Cranwell."

Now, My Lord, I support that. There is only one observation which I would venture to make with regard to this. Indian opinion with regard to the establishment of such a College and to the training of Indian officers is extremely sensitive.

We do not wish the matter to be left to the passing whims of successive Commanders-in-Chief. One Commander-in-Chief may be

a progressive may who believes that India can be made self-sufficient in the matter of defence, another Commander-in-Chief may be an extremely conservative and cautious man. I want the Indian Legislature, therefore, to have an effective voice in the matter of military training and the upkeep of these colleges and institutions for the training of Indian officers.

I pass now to the third matter, namely, that in order to avoid delay the Government of India be instructed to set up a committee of experts, both British and Indian, including representatives of the Indian States, to work out the details of the establishment of such a college. I have just said that such a committee has been appointed and has met and submitted a Report, and that Report has not satisfied any section of Indian opinion, as far as I know.

These, My Lord, were the recommendations with regard to the training of Officers. Further, that Report also referred to the fact that Indian opinion attached great importance to the reduction of the number of British troops in India to the lowest possible figure, and recommended that the question should form the subject of early expert investigation. I have already referred to this matter, but I wish to point out that the early expert investigation suggested in this paragraph has yet to come about.

At the present moment these are all the matters relating to the Army which I intended to take up, and I shall now pass to the next question, which relates to External Affairs.

Mr. Joshi: May I point out that I asked Sir Tej Bahadur Sapru a question?

Sir Tej Bahadur Sapru: I have already answered that. I say it is open to discussion whether the Budget relating to the military forces and so on should be open to vote or not. Beyond that I am not prepared to go.

Chairman: Sir Tej Bahadur Sapru has been of very great assistance to us, if he will allow me to say so, as he always is. Do you think we might relieve you, Sir Tej, by asking Pandit Madan Mohan Malaviya to go on with the subject of the Army, and then come back to External Affairs?

Sir Tej Bahadur Sapru: That will suit me better. What I would say, therefore, is that while on the one hand it may seem to some of my countrymen that my scheme is rather a cautious one, on the other hand I feel very strongly that, having regard to the delicacy of the Army machinery, and having regard to the fact that we cannot afford to play with that machinery, if my humble suggestions are taken into consideration I think we shall lay the surest foundations upon which we can build up the entire superstructure of the defence of India within, probably, a shorter period than some of us imagine.

Dr. Ambedkar: I should like to know what view Sir Tej Bahadur Sapru has regarding the relationship which should subsist between the Army Member and the Commander-in-Chief. Would

the Commander-in-Chief be merely the head of the department under the control and supervision of the Minister or Member or would you give him certain powers with which the Army Member would not have the right to interfere?

Sir Tej Bahadur Sapru: I am not prepared to go into details, but as I conceive the position of the Army Member he will deal with general questions of policy, financial and otherwise, but he will have no power to deal with technical or administrative matters relating to the Army and, if he is wise, even if he has such power he will not exercise it. I have no personal knowledge of the matter, but I appeal to my British colleagues here to say what exactly the position in England is with regard to the Army. The Secretary of State for War has probably no power to interfere with the internal discipline of the Army but deals with big questions of policy. I cannot forget one period of your Army history, the period of the Duke of Cambridge.

Pandit M. M. Malaviya: Lord Chancellor, I am sure we all feel very grateful to Sir Tej Bahadur Sapru for the very lucid and able manner in which he has opened the important subject of National Defence.

I agree with Sir Tej to a large extent in what he has said. But there are some vital points on which I disagree. I think we are all agreed that with the establishment of responsible self-government, the most important responsibility which devolves upon us Indians is for national defence. I do not think there can be two opinions on this subject. During the discussions held last year it was stated by the sub-Committee which was appointed to deal with this question that it must be recognised that the responsibility for the defence of India must hereafter rest upon the shoulders of Indians. If that is so, then I ask—and I am sure everyone will agree—that Indians be given a fair chance to discharge that responsibility. That responsibility demands that they should build up a national Army and maintain it in efficiency. That demands that they should offer all the assistance, financial and otherwise, which the Army as it exists may need. To enable them to discharge that responsibility and also to preserve peace and order in the country, and therefore to ensure progress, it is essential that they must have full control of the Army. Unless the full control of the Army is vested in the future Legislature, I submit that the responsibility of building up a responsible government in the country will not have been started under fair conditions from the beginning. If there is an idea that the National Government has no control over the Army, the situation will be regarded as anomalous. It cannot inspire the same confidence in the Government as would be inspired if it were known that the Government was a full Government, having all the responsibilities and powers which every civilized Government possesses. I submit, therefore, than on this vital question the Committee should make its mind quite clear that in order to help Indians to discharge the responsibility that is to rest upon them, it is essential that the

control of the Army should be passed on to them from the beginning.

If that is agreed, I should say that I agree with Sir Tej Bahadur Sapru that one of the important things to do is to appoint an Indian as the Army Member. The appointment of an Indian Member of the Army was advocated by me before the Rawlinson Committee in 1921, and I am glad that it has found such strong support from Sir Tej Bahadur Sapru and other members who spoke last year. But while I am agreed as to the necessity of the appointment of an Indian Army Member as the first step to enable Indians to organise national defence, I do not agree with Sir Tej Bahadur that this Member should be responsible to the Governor-General. I submit that he should be responsible to the Legislature as other Ministers in a National Government will be. But it may be said that there is a difficulty in the way, and that that difficulty arises from the presence of British troops in India. The Committee is aware that the Army in India consists of two parts. One is the Indian Army proper, which consisted in 1928 of 158,143 Indian soldiers and 4,833 Indian officers with the Viceroy's commission, 6,998 officers with the King's commission, and British soldiers to the number of 61,537. I think it will be generally agreed without much difficulty that the Indian Member should have charge of the Indian Army, the Army which consists of Indian soldiers and which is officered largely by British officers and partly by Indians; but there is a difficulty felt, I understand from conversations which I have had with some of our British friends here, regarding the transfer of the control of British troops to the Indian Member. It is said that British troops will not take their orders from an Indian Member. I have been very sorry to hear this. I thought that our British fellow-subjects desired that India should remain within the British Commonwealth of Nations and that they had recognised that it was essential for that purpose that we should be put on a footing of equality with them in all matters, that we should be equal partners, and if we are equal partners and equal fellow-subjects then I submit it must follow that whether an Indian happens to be the officer who gives the word of command or whether a Britisher happens to be the officer who gives the word of command, the command must be obeyed by everyone as a matter of duty; but if this is not acceptable to our friends of the British Delegation, then I submit that a very great difficulty will arise in building up the national Army for national defence. In this connection I would also say that the question should be looked at in the light of the fact that the presence of British troops is not desired by British statesmen to be a permanent feature of the new organisation in India, that everybody agrees that the British troops are to stay there for a limited period only. If that is so, there is greater reason why it would not be insisted upon that the British troops should not ordinarily be under the control of the Indian Member.

I wish to make it clear that when I speak of the control of the Army by an Indian Member I mean the same kind of control as is

exercised by such a Member under every civilised government. I do not imagine that there should be any interference with drill, discipline, field operations or the equipment of the Army, and so on; all those matters of a technical character will be within the special province of the Commander-in-Chief, advised, as Sir Tej Sapru has suggested, by an advisory council, which I think would be a very desirable thing. But all matters of a non-technical character should be within the jurisdiction of the Army Member. He should also have the power to require the Commander-in-Chief, or the Officer Commanding to move the troops from one part of the country to another wherever there may be a necessity for it. There may be a difficulty in the minds of some of our friends that the Indian Member may not some time send out the troops where they may be needed. To meet such an emergency in a case of that character, I am willing that we should provide in the constitution that on a proved danger from outside or a proved breakdown of the machinery of government the Governor-General may, if he thinks it necessary for preventing external aggression or internal commotion, suspend the constitution to the extent necessary, and himself take charge of the Army. A provision like that will enable any emergency to be met, and with that provision I do not see why there should be any objection taken to the exercise by an Indian Army Member of the powers which such Members exercise in this country and in other countries.

Chairman: Will you kindly help me there? I have taken a short note of what you have said, not in your good language but to remind myself:—

> " on a proved danger, whether external or internal, the Governor-General to take charge."

Pandit M. M. Malaviya: Yes, to suspend the constitution to the extent necessary and to take charge.

Chairman: Yes, that follows, and take charge of the Army. It is " on a proved danger," and I suppose the Governor-General would be the person who would decide whether that danger existed.

Pandit M. M. Malaviya: Yes, but he will discuss the matter with his Ministers.

Chairman: Yes, unless he is a very foolish man.

Pandit M. M. Malaviya: He will also record his reasons. Those will be the safeguards against any hasty exercise of his power.

Chairman: " He will record his reasons." What in—some newspaper?

Pandit M. M. Malaviya: No My Lord, I do not think that a Governor-General records his reasons in newspapers.

Chairman: I was wondering where he should record it—in some book?

Pandit M. M. Malaviya: Record it among the State papers—on some paper which would become a State paper.

Chairman: Not necessarily for publication to the Press?

Pandit M. M. Malaviya: No.

Chairman: I am much obliged.

Pandit M. M. Malaviya: Unless he should think it necessary. There may be an occasion when to justify his action he may wish it to be known why he had taken that extraordinary step.

Now, My Lord, that is one matter on which I regret to say I differ from my friend Sir Tej Bahadur Sapru; but I think it is a matter on which an agreement should still be possible, because I wish to provide for what I think he also wants to provide for, *viz.*, that in case of a difficulty the difficulty should be met by the exercise by the Governor-General of his emergency powers.

Then, My Lord, there are other duties which will devolve upon the Indian Army Member, and the most important of these is the duty of building up the national Army. The Indian Army is, as I have said, one hundred and fifty-eight thousand strong, and the capacity of our soldiers has been proved.

Chairman: Did you say that was the 1928 figure?

Pandit M. M. Malaviya: Yes, 1928.

Chairman: I have got the last one, which is one hundred and sixty thousand.

Pandit M. M. Malaviya: Thank you. When I come to the question of expenditure I shall remind the Committee, in support of what Sir Tej Bahadur Sapru has said, of the need for economy in military expenditure. The question of the continuance of British troops in India requires to be examined from two points of view. Firstly, the need of them in the country, owing to the apprehension of danger from outside or inside; secondly, the question of economy.

Chairman: I hope you will touch on these two points, because I am very anxious to follow you on these points, if you will kindly in the course of your remarks address yourself to two questions. I would like you to tell us, firstly, whether you consider the Army as at present constituted too large; I should like your opinion; and, secondly, whether you think it is being run too expensively. They are two different questions rather.

Pandit M. M. Malaviya: My Lord, I consider that the Army as it is constituted to-day, is too large—much larger than the needs of the country and the capacity of the people to bear the expenditure justify.

Chairman: We will come to the capacity in a moment. What do you say ought to be the size of the Army in India? Have you come to any conclusion?

Pandit M. M. Malaviya: I should not myself venture an opinion on that matter; but what I would suggest is in support of what Sir Tej Bahadur Sapru has said, with a little variation—that we should appoint a Committee consisting of military experts and Indian public men to go into this question of what the size of the

Army should be, and report on it, and that the future Government of India should act upon its recommendation. I am willing that such a Committee may be appointed even now, and that the recommendation of the Committee, accepted by representatives of this Conference and His Majesty's Government, may become part of our agreement on which the new constitution is to be based. I do not venture to suggest what particular reduction should be made because it is not for a layman like me to express that opinion.

Chairman: No, quite right.

Pandit M. M. Malaviya: But I do submit that the Army is greater in numbers than it should be.

Chairman: Then are you contemplating a fixed number or a fluctuating number?

Pandit M. M. Malaviya: I contemplate a fixed number of the standing Army; but I propose that we should do what other civilised Governments have done: add to that standing Army a national Army. Japan started with a small national Army. It has had a very large militia. India needs a militia. India cannot go on paying for a standing Army to the extent that it does at present. Therefore, my proposal is that there should be a small compact standing Army of the size to be determined in accordance with the opinions of military experts and public men, and that there should also be a militia which should be quite large in number and which should be available in an emergency. In that way the training of the people for national defence will be expedited, and there will also be a great deal of economy in expenditure.

Chairman: What period do you contemplate for a militiaman to serve?

Pandit M. M. Malaviya: Ordinarily I should think a period of three years, from eighteen to twenty-one, should be sufficient, with refresher courses in subsequent years. But here again I should not be dogmatic. These are matters on which, as I have said, I should like the future Government of India to depend upon the advice of military experts and public men sitting together in consultation and conference. I have mentioned this because I believe it is a system which has to be introduced, which has much to commend it, both because it will build up the spirit of national defence among the people, and also lead to a considerable amount of economy.

Chairman: What do you contemplate as the size of the militia body?

Pandit M. M. Malaviya: That depends. That again is a matter on which any dogmatic expression of opinion would not perhaps be wise.

Chairman: It would be a voluntary service? What do you contemplate would be the cost of it?

Pandit M. M. Malaviya: The cost has to be worked out. I cannot give you the exact figure, but, whatever that cost may be, it will be worth it, because on the whole a militia like that will cost but a fraction of the expense of a standing Army, and the larger the militia is the greater will be the chance of reducing the total expenditure on the Army.

Chairman: Just one final question. The recruiting for that will be from all over India?

Pandit M. M. Malaviya: The recruiting for that will be from all over India, and the recruits should come from all classes of the people. I understand you have in this country a system of picking out boys at school for a military career and giving them military education in the schools, and then sending them to a central institution to train them for officers' duties. That would be the sort of system I have in mind; but we must examine various systems to see which will suit the needs of India best.

Now, My Lord, this part of the duty of the Indian Army Member will be not less important than his duty of presenting the military Budget, and so on. So far as that part of the work is concerned, if Indians are to receive instruction in all arms, who can be trusted more satisfactorily to see that they receive such education than Indians themselves? An Indian Member responsible to the Legislature, obtaining supplies from the Legislature and carrying out the resolutions of the Legislature in regard to the instruction of Indians in all arms, will be just the person needed to build up a national Army.

We have heard the history of the many Committees which have been appointed. The story is a sad one. Ever since 1858 when the Indian Army was reorganised we have been complaining very strongly of the expenditure on the Army. The Government of India themselves have made repeated protests. I do not think there is any subject on which the protests of the Government of India were stronger or more numerous than on the question of military expenditure, but their protests have been in vain. Just to show the strength of feeling of the Government of India, perhaps I may give a sample of the protests which they have made and which have not been heeded by the War Office and His Majesty's Government here. The despatch from which I will quote is typical of many other despatches which have been sent by the Government of India. On the 8th February, 1878, the Government of India wrote to the Government here that " placed as it was under the serious responsibility of so administering the affairs of the greatest dependency of the British Crown that while British supremacy is strongly guarded the means of securing that end shall not unduly weigh on the people of the country, it was constrained to represent to Her Majesty's Government that the burden thrown upon India on account of the British troops is excessive, and beyond what an impartial judgment would assign in considering the relative mate-

rial wealth of the two countries and the mutual obligations which subsist between them. . . . All that we can do is to appeal to the British Government for an impartial view of the relative financial capacity of the two countries to bear the charges that arise from the maintenance of the Army of Great Britain and for a generous consideration of the share assigned by the wealthiest nation in the world to a dependency so comparatively poor and so little advanced as India."

Chairman: That was the year before the second Afghan War?

Pandit M. M. Malaviya: It was 1878. After the second Afghan War, the Government appointed an Army Commission, which also recommended a reduction in expenditure. It reported, so far as I remember, about 1880.

Chairman: Was that just before or just after Lord Ripon took office?

Pandit M. M. Malaviya: I think it was just before. Lord Ripon's tenure was from 1880 to 1884. During all these many years since we have been complaining of the expenditure of the Army being excessive and beyond the capacity of our people to bear. The Hague Conference laid it down that no country should spend more than twenty per cent. of its revenues on Army expenditure. In India forty-five per cent. of the revenues is being so spent. There has been a reduction recently in view of the great financial stringency, but that is a trifle. We have been urging a much larger reduction.

There are two ways in which this expenditure can be reduced. One is by reducing the British troops and gradually removing them altogether from India! It having been recognised that in future Indians themselves must bear the responsibility of defending India, British troops will have to be removed. But the question of removal has to be looked at from two points of view. One is the immediate removal of a portion of the troops and the other is the progressive removal of the rest in course of time. At present, of the sixty thousand troops, about thirty thousand are held for what are called internal security purposes. That costs a very large sum of money to the country, and it has been urged more than once that the number of British troops for internal security has been unduly increased and they should be removed.

Chairman: Removed, or reduced?

Pandit M. M. Malaviya: The portion of the British troops which is spoken of as the internal security troops should be removed, *i.e.*, brought back to England. That will bring a large amount of relief to the finances of the country. If that cannot be, if the Expert Committee I have suggested should report that they should not be removed in such a large number at once, we should expect that Committee to indicate how they may be removed in progressive numbers in the course of years.

That will be one important source of reduction in military expenditure. We had been urging reduction for many years, ever since the Congress came into existence, but our prayers have not been heeded. Now, however, there is the opportunity, when the Government find themselves compelled owing to financial reasons to reduce that expenditure, and they cannot do better than to take up the question of a substantial immediate reduction of military expenditure by the removal of a portion of the British troops which are in India.

The second aspect of the duties of the Military Member, as I have submitted, will be to look after the Indian portion of the Army; the third, to organise the National Militia, and the fourth, to establish and maintain institutions for military instruction in all arms in the country.

Chairman: Is your only cure for the expenditure in the Army a removal of a block of the troops, or do you also say that it could be brought about by economising in other directions?

Pandit M. M. Malaviya: I am not in a position, not possessing the technical knowledge of the details, to say in what directions and to what extent other reductions should take place. But I believe, along with a large body of my countrymen, that the expenditure on the Army is very excessive, and can be reduced in many directions. Some of it is clearly unjust. Look at the charges for capitation. I do not know what language to use in speaking of it. But, you see, it is regarded by us as a clear injustice, a thing which cannot be justified for half a moment, and yet this has gone on for ever so long, and so with regard to many other charges which India has had to bear. Among our Indian public men, no one has studied this question and spoken and written on it more than my esteemed friend Sir Dinshaw Eduljee Vacha, and he has shown in how many instances the Army expenditure has been put upon India without any justification, and I submit that all those questions require examination. The capitation charges are only one item; there are many other charges which require examination. I cannot say here in what definite directions the reductions should be expected. It is for that reason that I have suggested the appointment of a Committee consisting of military experts and our public men who should go into the question and make recommendations as to what should be done.

I was speaking on the question of the instruction of Indians in military matters. It is a sad story to tell that Indians have not been admitted to the military institutions in this country for the last several decades, more than half a century, and it is only recently that some of them have obtained King's commissions. Your Lordship and the Committee will know that for nearly forty-five years the Congress has been urging that Indians should be admitted to the higher ranks of the Army by being given the training that

is needed for them, but all that prayer went unheeded. It was only after the war that Lord Hardinge recommended that King's commissions should be thrown open to Indians to a limited extent, and a few commissions have been so thrown open. Since then, as Sir Tej Bahadur Sapru has reminded the Committee, several Committees have been appointed. There was Lord Rawlinson's Committee. I appeared before them. I had the honour of putting the case for the reduction of Indian Army expenditure before them, and also the case for an Indian Member and for the introduction of military schools and colleges, but nothing came out of it except that the Army was reduced by seven thousand troops, so far as I remember, in the year that followed, or shortly after that. That was, I think, in the year 1921, but perhaps Sir Muhammad Shafi and Sir Tej Bahadur Sapru will remember better than I do.

Sir Tej Bahadur Sapru: Yes, it was 1921.

Pandit M. M. Malaviya: And the British troops were reduced by about seven thousand or so in the year that followed, or about that time, but there it stopped. I urged the creation of a military college, of an Indian Sandhurst. I even offered to raise money to establish that college if the Government were not able to find the money required; but the Commander-in-Chief and Sir Malcolm Hailey told me that they would find the money. The money was found and an institution was established in Dehra Dun, and the name of His Royal Highness the Prince of Wales was associated with it; but that is merely a school preparing boys for going up for a military career; it is not an Indian Sandhurst.

Then came the Skeen Committee, of which my friend Mr. Jinnah was a member, and we know the sad end of the recommendations of that Committee.

So, My Lord, we have felt that to place the responsibility of training Indians in all arms upon our British fellow-subjects is not the correct thing. We must relieve them of that responsibility and take that responsibility upon ourselves. Therefore I submit that the Indian Member of the Army if he is appointed shall have this very important duty to perform, that in accordance with the wishes and recommendations of the Legislature he will be responsible for the establishment and maintenance of military institutions for training in all arms. That is a very vital need of the situation. When England decided that responsible government was to be established in India, there could be no doubt that the period during which that government would be established in its full form could only be a limited one. That decision meant that England is going to withdraw British troops from India. That decision means, as has been stated by the sub-Committee, that the responsibility for national defence must hereafter rest upon Indians. We Indians must prepare ourselves and we should be allowed to prepare ourselves in a fair way for discharging that responsibility. I feel, and many with me feel, that we cannot

discharge that responsibility, you will not give us a fair trial, it you will not let us have an Indian Member in charge of the Army.

And there is another reason why we want it. For the next twenty years or twenty-five years or twenty-eight years, during which time British troops may continue partly in India, or during the time which will be necessary to Indianise the Army by the creation of Indian officers, whatever the period may be, if you do not allow the Indian Member to be responsible to the Indian Legislature and to discharge the duties to which I have referred, he will not have gained experience in the subject. Others working with him in the Legislature will not have gained any experience in the subject; and in order that our people should begin to acquire that experience of dealing with Army affairs and matters which is essential, I submit it is just and proper and necessary that the Indian Member of the Council should be responsible to the Legislature.

I have said, My Lord, that I should start institutions all over the country to train our young men for the Army, and that recruitment should be open to all classes. I think it was a great wrong which was done when the recruitment was limited to certain classes of people in the country. No doubt those who have had the best opportunity to serve as soldiers have distinguished themselves as soldiers, and we are proud of the fact; but I believe, along with many of my countrymen—I may say the educated community generally—that every man whom God has created with the qualities of man is competent to bear arms and to defend his country—to defend his hearth and home and his country. What is needed is that he should be given the education that is necessary to enable him to do it in the best way possible.

In the fifties of the last century the Japanese were in a very poor condition. It was thought by some that two Europeans or Americans might drive five hundred of them. The freedom of their country was in danger. They faced the difficulties and awoke to the necessity of the situation. They had their revolution and restoration in 1868. One of the first acts which they performed was the creation of an Army. They began to instruct young men in patriotism in all their schools and they introduced military instruction. Between 1882 and 1895, in that short period, they had so trained their Army that they defeated China in the war in 1895. They had so trained themselves further that in 1905 they defeated Russia; and since then all great powers have welcomed Japan as a great power and as a friend. India wants the opportunity to do likewise and I submit that the misgivings which are entertained by my British friends about our capacity to be able to build up our Army should be viewed in the light both of the past history of India and of the achievements of our people in recent times. As far as past history is concerned, our soldiers have given evidence of their great soldierly qualities. I do not know that I should detain the Committee at any length on this question;

but merely in the hope that the doubts of my British friends may possibly be somewhat removed, I should like to read to the Committee here what one of your own distinguished writers has said.

"On this preliminary point of quality"—wrote Mr. S. S. Thorburn, late of the I.C.S., in the *Quarterly Review* of July, 1896—

> "I think the preponderance of expert opinion favours the belief that Sikhs, Pathans, Gurkhas, and after them the best classes of Hindu Jats, Rajputs, and Punjabi Mussalmans, are as good fighting men as any in the world. Only a few months ago Sir Ian Hamilton, in the scrap book on the first part of the Russo-Japanese War, recorded, 'Every thinking soldier who has served in our recent Indian campaigns is aware that for such operations a good Sikh, Pathan or Gurkha battalion is more generally serviceable than a British battalion.' In the next page he wrote, 'There is material in the North of India and in Nepal sufficient and fit, under good leadership, to shake the artificial society of Europe to its foundations.'"

Now, I do not want our soldiers to shake the artificial society of Europe to its foundations. I feel that I shall have done my duty if I can shake the disbelief and suspicion and misgiving that occupies the minds of my British fellow-members with regard to our capacity to defend ourselves.

Let me quote one more instance. In a book, Colonel Merewether's "Indian Corps in France", Lord Curzon said in his introduction:—

> "The book describes the manner in which the force, and the drafts and reinforcements by which it was followed, comported themselves in the fearful struggle of 1914 and 1915. that the Indian Expeditionary Force arrived in the nick of time, that it helped to save both the cause of the Allies and of civilisation, after the sanguinary tumult of the opening weeks of the War, has been openly acknowledged by the highest in the land from the Sovereign downwards. I recall that it was emphatically stated to me by Lord French himself. The nature and value of that service can never be forgotten."

But the memory of man is short, and I am sorry to think, My Lord, that the capacity the Indian soldiers displayed on the battlefields of Flanders, France and elsewhere, which they displayed on many battlefields, is forgotten when we are discussing the capacity of Indians to officer their own Army and be able to defend their own land.

Chairman: Thank you very much, Pandit Malaviya. You will allow me to say that we have not forgotten the valour of your Indian troops, and I will not readily forget your speech. I will

not say I agree with every word of it; you would not expect me to do so the first time, but I am profoundly thankful you did not go back to India with that speech locked up in your breast, and I am grateful to you for what you have said.

(*The Committee adjourned at 4-10 p.m.*)

PROCEEDINGS OF THE FORTY-SEVENTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE, HELD ON TUESDAY, THE 17TH NOVEMBER, 1931, AT 11 A.M.

Defence (concluded).

Pandit M. M. Malaviya: My Lord Chancellor, I do not wish to take up much more of the time of the Committee, but only to draw attention to one fact. I fear that it is not realised how strong Indian public opinion is on the question of the transfer of the control of the Army to the new Legislature of India. I submit that the Government here should not ignore that public opinion. It will make a great difference to the people in India whether the Army Member is in charge of the Army or is not. It will make a great difference to them whether he is responsible to the Governor General or to the Legislature. I have suggested how, even if the Indian Member is responsible to the Legislature, the Governor General should have the power under my proposal to deal with the cases of emergency which may arise. He may suspend the constitution, in the language of the law, and may take charge of the Army for the time being. I submit that that provision regarding the necessary emergency power to deal with the British troops ultimately gives all the assurances that may be desired to meet such situations as may arise. That provision I very strongly urge upon the Committee, namely, that it should recommend that the future Indian Army Member should be responsible to the Legislature. My Lord Chancellor, I wish to say nothing more.

Diwan Bahadur Mudaliyar: On a previous occasion I had the opportunity of saying something about administration. I hope the result of the present discussion will emerge in a Report from your hands, Lord Chancellor, which will prove highly useful. Two views have been put forward with reference to the Army. One of these, by Sir Tej Bahadur Sapru, recognised frankly that during the transitional period the Army should be a reserved Crown subject, but may be administered by an Indian Member. The other view, advocated by Pandit Malaviya, was that from the initial stage the Army should be treated as an ordinary subject, subject to the jurisdiction of the Legislature, but with overriding powers in the Governor General as representative of the Crown.

I may at once state that I personally, as I made clear on the last occasion, hold to the view put forward by Sir Tej Bahadur Sapru, and I do so because frankly I feel that of the two alter-

natives, facing the facts, the view of Sir Tej Bahadur Sapru is the better. The logic of facts and of realities has driven Pandit Madan Mohan Malaviya to suggest and to concede that in the event of its being necessary the Governor General should have extraordinary powers, such extraordinary powers indeed as will authorise him to suspend the constitution. Well, if that position can be calmly contemplated I feel personally, as a constitutionalist, that it will be more satisfactory from my point of view to recommend from the initial stage that during the transitional period this subject should be treated as a reserved subject or as a Crown subject.

Lord Chancellor, there has been a great deal said about the strength of the Army, about the personnel of the fighting forces, and so on. I wish to make it quite clear that at this stage I am not willing to consider the question of the strength of the Army at all. It is very often believed that the large expenditure on the Army is due to the fighting forces. A more realistic idea of the relationship between the fighting forces and the non-fighting forces will enable many of us to see that it is not the fighting forces that consume all the amount that is devoted to the Army, but that it is what are called the ancillary and auxiliary services that take up much of the expenditure on the Army. It was my privilege within the last few months to serve on the Army Retrenchment Committee of the Assembly, and it was a matter of great surprise to me that, out of the fifty-two crores that were budgeted for Army expenditure, not more than eighteen crores were devoted to the pay, salaries, allowances, etc., of the fighting units, and that the rest of the amount was really spent on what may be termed the auxiliary services of the Army.

If you compare, again, the position of military expenditure in the year 1913-14, just before the War, and the position of military expenditure to-day, you will draw a similar conclusions—that it is not the strength of the Army that has to be tackled so much as the growth in expenditure in other subsidiary services. In 1913-14, the Army Budget was about twenty-nine crores. This year it was fifty-two crores. In 1913-14, the pay of the services of the fighting forces was about twelve and a half crores. This year it is about seventeen and a half to eighteen crores, so that you will see that it is not the fighting services that have taken up all the increased expenditure, but the ancillary services that have really swelled the amount of the Budget. Again, it will be found that after the war reductions have gone on in the strength of the Army, and that compared with the position in 1913-14, just before the war, the Army has been very considerably reduced in its personnel, the total reduction up to last year being about fifteen thousand British and twenty-eight thousand Indian active ranks and three thousand Reservists as compared with 1913-14. I have drawn your attention to this before—that there is a very incorrect opinion prevailing that it is the strength of the Army that is responsible for the growth of

the expenditure, and that unless the strength of the Army is materially reduced any reduction in Army expenditure is not possible. We in the Army Retrenchment Committee, on the other hand, have found out quite clearly that without reducing a single soldier of the Army a very considerable reduction of expenditure can be made.

These are subjects which are relevant for consideration when the question of the contract Budget of the Army is to be fixed, and I therefore venture to join in the hope that the question of the reduction of the Army will be taken up after the Indian Member has been in charge of the subject for some months or years, and not at the present time, and that the contract Budget may be arrived at as the result of enquiries which are being carried on still by the Army Retrenchment Committee and by various other expedients that may be devised for arriving at that contract Budget. It is not essential to touch on the question of the strength of the Army to get a reduced Army Budget fixed for a first period of five years.

Sir Tej Bahadur Sapru very rightly emphasized one aspect of the question relating to the Army, namely, that the Army should be in charge of an Indian Member. If I followed the whole logic of his speech aright, it was this, that while we would agree to make the subject a Crown subject or reserved subject, there was one essential for which he strongly pleaded, namely, that the subject itself should be in charge of an Indian Member.

All the reforms that we foresee regarding the expenditure of the Army and the strength of the Army could be worked out only if there is an Indian Member in charge of it. At any rate, the future Federal Legislature would have confidence that a right examination of these questions is taking place only if the Army is administered through an Indian Member.

If, on the other hand, as I said once before, the Army is in charge of an official European Member, you straight away give the impression to the Federal Legislature that all is not well with the administration of the Army. You make the Members of the Legislature suspicious and you make them examine in a very critical spirit, and perhaps necessarily in a hostile spirit, all the proposals he may make in perfect good faith. You therefore queer the pitch of administration so far as the Army is concerned, and it is accordingly not the line of practical politics to have the administration of this subject in the hands of an official Member.

The question was asked, during Sir Tej Bahadur Sapru's speech, of what the position of the Army Member would be in relation to the Commander-in-Chief, and I believe Pandit Madan Mohan Malaviya said it would be analogous to the position of the Secretary of State for War in this country. At present the Commander-in-Chief is also the Member in charge of the Army, and he is advised by a General Council. I take it the Army Member would similarly have a General Council attached to him,

including the Commander-in-Chief, who will advise him and direct him in relation to the day-to-day administration of Army affairs.

Sir Tej Bahadur Sapru was asked what would happen if beyond the contract Budget figure an additional amount was required for the Army, and he replied, very rightly in my opinion, that His Excellency the Viceroy would be the proper person to direct the additional expenditure if more expenditure were required. I entirely associate myself with that view, but I should like to have one piece of machinery devised—it may not be in the constitution, perhaps—to help the Viceroy to come to a conclusion on this point. In your country you have the Committee of Imperial Defence, which goes into questions relating to the Army and advises the Secretary of State for War and other members of the Cabinet on many of these questions. I do not know whether there is any machinery at the present time in India which is comparable to the Committee of Imperial Defence. My own personal impression is that there is not. I feel that that is a great drawback even under the present circumstances, and I certainly visualise under the new constitution that a Committee of Indian Defence will be set up which will be to a certain extent an advisory body for advising the Viceroy in regard to many of these matters.

The Committee of Indian Defence would naturally consist of the Prime Minister, the Finance Member, the Army Member, the Commander-in-Chief, perhaps the Chief of the General Staff, and one or two others, and they would be in day-to-day contact with the main general policies of Army administration, particularly with reference to questions of frontier policy; and it is through that Committee that the Viceroy will be advised when any question of extraordinary expenditure over and above the contract Budget is under consideration or requires his decision.

Lord Chancellor, Sir Tej Bahadur Sapru quite rightly emphasized, on this aspect of the question, that the position and distinction at present prevailing between the martial and non-martial races should be done away with, and that the Army should be open to recruitment to everybody who is physically and otherwise fit to enter the ranks of the Army. This is a very crucial question from many points of view. I need not refer to the fact that the present policy of classifying people into martial races and non-martial races has led to a great many difficulties—difficulties some of which have exhibited themselves in the course of the proceedings of this Conference—difficulties which have led to communities making special claims, and which have led to geographical areas being described as garrison Provinces. In the future Federation it would be fatal if any federating Unit were under the impression that it has a special key position with regard to the defence of India because of the amount of recruits it contributes to the Army. It would be fatal to the peaceful working of the Federal Constitution if there were an impression in any part of the federating

whole that that part is of special value from the martial point of view to the Federation as such. I, therefore, lay a great deal of emphasis on this claim which has been put forward that recruitment to the military ranks should be thrown open to all classes. I should like to quote here the views of the Government of my Province which, in commenting on the Simon Commission Report, very clearly stated that the Army should be thrown open to all classes. I do not make any special claim as a Madrasi, though Madrasis can well be proud of the fact that, in the early stages at any rate, their martial character was never questioned. The Government of Madras say this in paragraph 46 of the Report:—

> "The Government of Madras consider that the interest of the Province demands that the military tradition and the proved military capacity of the Madrasi should be recognised by the restoration of the old Madras regiments. So long as the Army is an Imperial concern, it is obviously desirable that it should be associated by recruitment with as wide an area as possible; and the revival of the Madras regiments may also help towards the attainment of the goal mentioned in Volume II, paragraph 211, of the Report, the possession by a self-governing India of military forces of its own; for the fact that at present such an overwhelming proportion of the Army is recruited from the Punjab and the United Provinces is one of the obstacles to the formation of an Indian National Army on which the Commission has laid stress."

I therefore plead, Lord Chancellor—though I realise it will not be part of the constitution—that in the future policy which will be adopted with regard to recruitment to the Army there will be no restriction, geographical, racial or otherwise, regarding the men who can come and play their part in the defence of the country.

Then, My Lord Chancellor, there is the question of the contract Budget, and how it should be discussed in the Legislature. I take it that the privileges which the Legislative Assembly now enjoys of discussing the Army Budget would certainly not be withdrawn from the Federal Budget. It would not be open for the Federal Legislature to cut any particular item of the demand, but it certainly ought to be open to the Federal Legislature to discuss the Army Budget in the same way as at present, and the periodic re-examinations, both with reference to Indianisation and with reference to the amount required for the Army, which would be arrived at by agreement between the Federal Government and the British Government or the Viceroy representing the Crown, will be laid before the Federal Legislature for ratification from time to time.

As regards the process of Indianisation Sir Tej Bahadur Sapru has referred to the fact that the Chetwode Report has not been acceptable to the majority of Indian opinion. With reference to

the intake of candidates for the new Sandhurst which is to be established in India, I learn from the members of that Committee that a decision was imposed upon the Committee and that the Committee was not permitted to discuss that question. It seems to me that that is the fundamental policy underlying the Chetwode Committee Report. We understood on the sub-Committee on Defence that that question was also going to be thrown open for discussion and decision. In any case I am prepared to agree to the proposal that Sir Tej Bahadur Sapru has made, that with an Indian Army Member in charge of the Army Department for the first two or three years different proposals might be placed by him before the Government and decisions might be arrived at; and that in the meanwhile we may not stop the progress of Indianisation but go on with the establishment of the local Sandhurst College.

Lord Reading: My Lord Chancellor, at the present moment we are discussing the one point, the Army and National Defence. Of course, there are four questions which you have indicated will have to be discussed; I will confine my observations to the Army and National Defence but in much of what I have to say I shall be covering by general observations the other three points.

Of course, with regard to all this discussion it is animated by the desire so far as we can to arrive at conclusions which will be agreeable and which at last will enable a constitution to be fashioned to work in the future in India. That is what has been in our minds, and, speaking for myself, for the reason that I have given before, that I do not want to associate other Delegates who are members of the Government with observations which I make, which are not binding on the Government, and are only binding on myself and the Liberal Party, so far as they have been accepted by them, I want to make quite clear at the outset that nothing that has occurred during the course of the debates in this Committee or otherwise in the Conference has modified or affected the opinion that I expressed at an earlier stage—in January of this year—with reference to what I believe to be the policy to be followed in the future for India. I then stated my view and I do not want to repeat it. All I desire to say is that I remain of the opinion that there should be Provincial autonomy, and also there should be responsibility at the Centre, qualified or limited by certain reservations and safeguards which I enumerated at the time.

May I be permitted to say, Lord Chancellor, in order to save time, that I have done a thing that I very rarely do, and dislike doing, namely, to study a speech which I made some time ago? I have been reading what I said in January. I have now come to the conclusion that if I were to make it to-day there is nothing that I would change in what I then said except for certain matters of detail which were left open for adjustment, and upon which my mind would be perfectly free and open now—matters of detail

which are hardly, I think, worth discussing at this stage. I can see no reason for changing any of the views I then expressed.

If I may deal with the subject of the Army and National Defence, which is the subject actually before us now, I may be mistaken, and I do not want to enter into any discussion about it because I am quite prepared to accept the position, but I thought that the position taken by Sir Tej Bahadur Sapru in his speech yesterday differed from that which he had put forward earlier in this Committee when we discussed these questions.

It was a change inasmuch as I had understood hitherto that he was in favour of the administration of the Army being left entirely to the Viceroy and of treating it as a Reserved subject. I did not understand—I am not complaining of it in the slightest degree—that he was advocating in his earlier speech that there should be a Minister for the Army in the sense which he has now indicated. I did understand that he accepted the view (as I thought) that there should be a Minister responsible to the Governor General, a Minister or Adviser, and that he would prefer—that was the suggestion—that he should sit with the other Ministers or Advisers to the Governor General whenever there was a meeting of the Cabinet, which in itself would be responsible to the Legislature.

Sir Tej Bahadur Sapru: So do I now. So far as that part of my speech is concerned I have not in the slightest degree changed my position. All that I said yesterday was that I contemplated the Army Member to be an Indian, and probably the only difference that you can find between my speech of yesterday and my speech of last year was that I said last year that I would leave it to the discretion of the Viceroy to appoint his Army Member, though I would prefer that Member to be an Indian. Yesterday I was more positive, and I said that there must be an Indian Army Member. That is the only difference. So far as the constructive side of it is concerned, I stand by every word of it I said last year.

Lord Reading: Well, that does indicate the change I had in mind. Sir Tej Bahadur Sapru has made it quite clear now, though I confess that as I read parts of his speech I was not quite clear whether there was a change of opinion. However, I follow now, and as I said, I am making no complaint. I think it was open to any member to change his opinion, and I can quite well conceive that Sir Tej Bahadur Sapru, in listening to the arguments here and in consultation with his friends, has come to the conclusion that he would prefer to have an Indian Minister or Adviser responsible, as he says, to the Governor General.

I do not want to take up time with that, because I have one or two observations only to make upon it; but with regard to Pandit Malaviya's proposals all that I can say is that I could not accept them at all.

I think he has in mind, if I followed him correctly, meeting the obstacles that at present exist and the difficulties that might confront the Minister in India if he were responsible to the Legislature, if he were to take over everything and become responsible from beginning to end and without limitation to the Legislature.

I do not understand how it is possible, in view of what we have put forward, that a proposal such as that which Pandit Malaviya has made could be acceptable; it is the very negation of everything that we have indicated from the start. This proposal is to have an Indian Minister responsible to the Legislature, and to have that Minister responsible to the Legislature throughout. He suggests that the control of the Army and of everything connected with the Army should lie with an Indian Minister responsible to the Legislature, that the only right that the Governor General would have of intervention would be in an emergency, when he should step in, and, as I follow the proposal, suspend the constitution.

I think that was the phrase used, and, if I may be permitted to say so, it is a most awkward predicament in which to place the Governor General in case of an emergency. It seems to me to lead to a condition of things which would be quite unworkable.

All I desire to say with regard to it—and I do not want to travel through all the various arguments—is that, to my mind, it is of the essence that if responsibility at the Centre is to be conferred upon the Indian Legislature, which I desire and advocate, there must be reservation with regard to the Army that that shall remain for the Governor General, and that the Governor General shall have the power to appoint a Minister—it was suggested one of three, but I am not particularly concerned with numbers—and that he should have the benefit of that Minister's advice and should select him.

I have never suggested that he must necessarily be an Englishman or that he must necessarily be an Indian. I leave it open to the Governor General, as Sir Tej did when he first made the proposal. These matters are entirely for the Governor General.

I wish to state very plainly to this Committee, however, adopting the principle now, as throughout, that we should be quite frank with each other in respect of these remarks, that any proposal for a responsible Government would be unacceptable to me if it did not make the exception that the Army must be in the hands of the Governor General and that any Minister must be responsible to him.

I should like to make just one qualification with regard to that in order to meet certain points. I can quite understand that there might be certain subjects in respect of which there may be a desire to have somebody responsible to the Legislature. There are various ways of meeting that. So far as some of the questions

are concerned which were dealt with by the Committee over which Mr. Thomas presided, there are matters in regard to which I can quite understand the Legislature and the Ministers would desire to make representations to the Governor General. There might be a desire that some things should be carried out more promptly than had been the case, and so on, but all that is really a matter of detail.

I think the mistake we are making in considering this is in assuming that the conditions are to be the same after we get the new constitution as they have been hitherto. As I ventured to say once before, at an earlier stage, I think we have to get into a different mentality, and I hope that then, when the new Legislature is constituted and the new Federal Constitution is in existence, it will be found that, so far from there being conflict or hostility between the Ministry and the Governor General, there will be, on the contrary, the most friendly co-operation and a desire to make everything work satisfactorily; there will be continuous consultation and continuous collaboration.

I cannot myself see why, in these circumstances, it should not be quite sufficient to be able to make any representation that might be necessary. It may be desired to have a Standing Committee of the Legislature or an Advisory Committee of the Legislature. I really care very little about what method be adopted, provided that the control and the responsibility remain with the Governor General throughout, and that he has the right of appointing an Advisor who will certainly not be a member of the Cabinet in a strict sense, because he will be responsible to the Governor General and not to the Legislature.

Now, Lord Chancellor, I said I would not take long, and I do not wish to take up any further time. My one idea in making this further statement is that I wanted to make it clear that I stand firmly by what I said earlier in the debate, which I have never repeated or had opportunities of discussing since. I make these remarks now only so that the position which I am taking up may be fully understood.

Chairman: We are very much obliged to Lord Reading. Now, in a moment or two I will ask Sir Tej Bahadur Sapru to open the discussion on external relations; but I would first of all like to draw your attention to what was said about this Army subject in our last Report. If you will look at page 17 of the Report, paragraph 11, we there said:—

> "It is, however, admitted that this broad statement of the principle of responsible Government at the Centre, which will be the ultimate achievement of the constitution now to be framed, requires some qualification. There was general agreement in the sub-Committee that the assumption by India of all the powers and responsibilities which have

hitherto rested on Parliament cannot be made at one step, and that, during a period of transition—

> (i) The Governor General shall be responsible for Defence "—leaving out the words not material at present—" (including relations with the Indian States) . . . and that
>
> (ii) in certain situations, hereafter specified, which may arise outside the sphere of those subjects, the Governor General must be at liberty to act on his own responsibility and must be given the powers necessary to implement his decisions."

Now we have had an interesting discussion, and Lord Reading has said that he stands by the position which is indicated there. But we have had from the Pandit Malaviya some interesting suggestions of which one must take a note: first of all with regard to the complete control of the Army; secondly, with regard to the total reduction of the Army; with regard to a partial reduction of the Army; and also with regard to the expenditure on the Army. In addition to that he raised a very important point, which was the fourth one, namely, how far you could gradually built up an Indian Army, which would have to be done by military training both of the officers in the way he suggested, and of the ordinary soldier by the enrolment of a national militia. Now all those questions are of great interest and obviously must be taken into very careful consideration. It is one of the advantages of a Conference like this that those questions, with some of which I was not familiar, should be raised; and in due course of time those matters will be taken into careful consideration. But I am sure the Pandit Malaviya will perfectly understand me that, although I sympathise with what he has said, I also, in addition to sympathy, want to display considerable caution; and therefore I am not prepared at the present moment to give my assent to all of your suggestions. Personally I should prefer to do what my Lord Reading has done, rather to reiterate what we have said at our previous meeting. But at the same time your important questions must be considered, and I hope in due time such weight and such consent will be given to them as appears to be possible. I am very much obliged to you and Sir Tej Bahadur Sapru for what you have said; it will not be lost sight of.

Mr. Gandhi: Lord Chancellor and fellow Delegates, I know that a tremendous responsibility rests upon my shoulders in having to give the Congress view on this most important question.

I have been sent here with the deliberate intention of exploring every possible avenue to achieve an honourable settlement, whether by open discussion at this table or by private conferences with Ministers and public men who influence public opinion here, and with all those who are interested in questions vitally affecting India. Therefore I am under obligation not to leave a single stone un-

turned in order to arrive at a settlement, if only because the Congress is wedded to a policy which is known to you all. The Congress is intent upon reaching its goal at the earliest possible moment, and holds also very decided views upon all these matters. What is more to the purpose, it is to-day, or considers itself to-day, capable of shouldering all the responsibilities that flow from responsible self-government.

That being the case, I thought that I could not possibly allow the discussion on this most important matter to close without placing, as humbly as I could, and as briefly as I could, the Congress view on the question.

As you are all aware, the Congress case is that there should be complete responsibility transferred to India. That means, and it has been there stated, that there should be complete control over Defence and over External Affairs; but it also contemplates adjustments. I feel that we ought not to deceive ourselves, deceive the world, into thinking that we would be getting responsible government although we may not ask for responsibility in this vital matter. I think that a nation that has no control over her own defence forces and over her external policy, is hardly a responsible nation. Defence, its Army, is to a nation the very essence of its existence, and if a nation's defence is controlled by an outside agency, no matter how friendly it is, then that nation is certainly not responsibly governed. This is what our English teachers have taught us times without number, and therefore some Englishmen twitted me also when they heard the talk that we would have responsible government but we would not have or would not claim control over our own defence forces.

Hence I am here very respectfully to claim, on behalf of the Congress, complete control over the Army, over the defence forces and over external affairs. I put in this also so as to avoid having to speak on it when Sir Tej Bahadur Sapru speaks on that subject.

To this conclusion we have come with the greatest deliberation. If we do not get this control at the time of embarking upon responsibility, I cannot conceive a time when, because we are enjoying responsibility in other matters, we would be suddenly found fit to control our own defence forces.

I would like this Committee for just a few brief moments to understand what this Army at the present moment means. This Army, in my opinion, whether it is Indian or whether it is British, is really an army of occupation. It does not matter to us, at any rate to me, a bit—I speak from experience—that they are Sikhs or that they are Gurkhas or that they are Pathans or that they are men from Madras or that they are Rajputs; no matter who they are, they are foreigners to me whilst they are in the army, controlled by an alien government. I cannot speak to them. Soldiers have come to me stealthily, and have been afraid even of speaking to me, because they felt that they might be reported. It

is not possible for us ordinarily to go to the places where the soldiers are kept. They are also taught to regard us not as their countrymen. Unlike any other country in the world, there is absolutely no correspondence between them and the ordinary civil population. This I give as my evidence before this Committee as a man who has endeavoured to some into touch with every part of Indian life, with all those with whom it was possible for me to come into touch; and this is not my own personal experience alone, but it is the experience of hundreds and thousands of Congress men that there is an absolute wall between them and us.

I am therefore quite aware that it is a tremendous thing for us at once to shoulder that responsibility and to have control of this Army, say, less the British soldiers. That is our unfortunate, unhappy position created for us, I am sorry to have to say, by our rulers.

Then there is the British section of the Indian Army. What is the purpose of this British Army? Every Indian child knows that that British Army is there, including the Indian Army for the defence of British interests and for avoiding or resisting foreign aggression. I am sorry to have to make these remarks, but that is precisely what I have learned and have experienced, and it would be unjust even to my British friends if I did not give expression to the truth as I have seen it and as I hold it. Thirdly, it is an Army intended to suppress rebellion against constituted authority.

These, then, are the main functions of that Army, and hence it does not surprise me that Englishmen should take the view they do. If I were an Englishman, and had also the ambition to rule another nation, I would do precisely the same thing. I would take hold of Indians and train them as soldiers, and I would train them to be loyal to me, so loyal that they would, at my command, shoot anybody I desired them to shoot. Who was it that shot people at Jallianwala Bagh, if it was not their own countrymen? It is therefore not a matter of surprise to me, but it is a fact which stares me in the face.

The existence of the British troops there is also intended to serve this very purpose; it holds the balance between these different Indian soldiers evenly. It undoubtedly protects, as it must protect, the British officers, and it protects British lives. Again I do not make any complaint, if I would assume the premise that it was right for Great Britain to occupy India, and that it is right for Great Britain to hold India to-day and to continue to hold India, no matter under what altered conditions.

That being so, I have no difficulty in answering the question which Sir Tej Bahadur Sapru would not face and which Pandit Madan Mohan Malaviya also would not face. Both of them said that, not being experts, they were not able to say to what extent this Army could be or should be reduced. I, however, have no such difficulty. I have no difficulty in saying what should happen

to this Army; that is to say, I would say emphatically that the whole of this Army should be disbanded, if it does not pass under my control, before I could possibly shoulder the burden of running the government of India under the terrible handicaps under which we are labouring as a legacy of alien rule.

Therefore, that being my fundamental position, I would say that if you British Ministers and British people really wish well by India, if you will transfer power now to us, then regard this as a vital condition, that the Army should pass under our control in its entirety. But then I have told you that I know the risk. that is attendant upon it. That Army will no accept my command. I know that very well. I know that the British Commander-in-Chief will not accept my comand; nor would the Sikhs, nor the proud Rajputs—none of them would accept my command. But I expect, even so, to exercise that command with the good-will of the British people, that they will be there at the time of transferring the command to teach a new lesson to these very soldiers, and to tell them that they are after all serving their own countrymen if they do so. British troops may also be told: "Now is the time for you not to remain here to protect British interests and British lives, but you are here to protect India against foreign aggression, even against internal insurrection, as if you were defending and serving your own countrymen."

That is my dream. I know that I shall not realise that dream here. That is what I feel; the evidence that is before me, the evidence of my senses tells me that I am not going to realise that dream to-day and here as a result of the deliberations of this Conference. But I should still cherish that dream. It is the dream I should like to cherish up to the end of my time. But, seeing the atmosphere here, I know that I cannot possibly infect British statesmen or the British public with the idea or with the ideal that this should be also their cherished mission. That is how I would interpret the Prime Minister's declaration; that is how I would interpret Lord Irwin's wishes. It should be the proud privilege and the proud duty of Great Britain now to initiate us in the mysteries of conducting our own defence. Having clipped our wings, it is their duty to give us wings whereby we can fly, even as they fly. That is really my ambition, and therefore I say I would wait till eternity if I cannot get control of defence. I refuse to deceive myself that I am going to embark upon responsible Government although I cannot control my defence.

After all, India is not a nation which has never known how to defend herself. There is all the material there. There are the Muhammadans, standing in no dread of foreign invasion. The Sikhs will refuse to think that they can be conquered by anybody. The Gurkha, immediately he develops the national mind, will say: "I alone can defend India." Then there are the Rajputs, who are supposed to be responsible for a thousand Thermoplyæs, and

not one little Thermopylæ in Greece. That is what the Englishman, Colonel Tod, told us. Colonel Tod has taught us to believe that every pass in Rajputana is a Thermopylæ. Do these people stand in need of learning the art of defence?

I assume that if I shoulder the burden of responsibility all these people are going to join hands. I am here writhing in agony to see that we have not yet come to terms on the communal question; but whenever the communal settlement comes, it must presuppose that we are going to trust each other. Whether the rule is predominantly Muhammadan or Sikh or Hindu, they will not rule as Hindus or Muhammadans or Sikhs, but they will rule as Indians. If we have distrust of one another, then we want British people there if we do not want to be killed by one another. But then let us not talk of responsible government.

I at least cannot possibly think that we have got responsible government without control of the Army, and therefore I feel deep down at the bottom of my heart that if we are to have responsible government—and the Congress wants responsible government, the Congress has faith in itself, in the masses of the people, and in all those brave military races, and what is more, the Congress has faith also in Englishmen some day doing their duty and transferring complete control to us—we must infect the British with that love for India, which would enable her to stand on her own feet. If the British people think that we shall require a century before that can be done, then for that century the Congress will wander in the wilderness, and the Congress must go through that terrible fiery ordeal, it must go through a storm of distress, misrepresentation and—if it becomes necessary and if it is God's will—a shower of bullets. If this happens it will be because we cannot trust one another, because Englishmen and Indians have different angles of vision.

That is my fundamental position. I do not want to go into it in detail. I have put this case as forcibly as I am capable of putting it. But if this one thing is admitted, I am resourceful enough to submit and frame safeguard after safeguard which will commend themselves to any unbiased mind, provided that it is common cause that those safeguards must be in the interests of India. But I want to go further and endorse what Lord Irwin said, that although the safeguards in the pact are stated to be in the interests of India, they must be considered—I believe Lord Irwin used my name, and said that Gandhi also said they must be considered—as in the mutual interests of India and England. I endorse that. I do not conceive a single safeguard that will be only in the interests of India, not a single safeguard that will not be also in the interests of Great Britain, provided that we contemplate a partnership, a partnership at will, and a partnership on absolutely equal terms. The very reasons that I have given you to-day for demanding that complete control for the Army are also

reasons for pleading for, for demanding, control over our external affairs.

Not being well versed in what is really meant by external affairs, and having to plead my ignorance of what is stated in these Reports of the Round Table Conference on the subject, I asked my friends Mr. Iyengar and Sir Tej Bahadur Sapru to give me a first lesson in what is meant by external affairs and foreign relations. I have got their reply before me. They state that the words mean relations with neighbouring powers, relations with Indian States, relations with other powers in international affairs, relations with the Dominions. If these are external affairs, I think we are quite capable of shouldering the burden and discharging our obligations in connection with external affairs. We can undoubtedly negotiate terms of peace with our own kith and kin, with our own neighbours, with our own countrymen, the Indian Princes. We can cultivate the friendliest relations with our neighbours the Afghans, and across the seas with the Japanese; and certainly we can negotiate with the Dominions also. If the Dominions will not have our countrymen to live there in perfect self-respect, we can deal with them.

It may me that I am talking out of folly, but you should understand that the Congress has thousands and tens of thousands of foolish men and foolish women like me, and it is on behalf of these that I respectfully register this claim, again saying that with the safeguards we have conceived we shall literally fulfil our obligations. Pandit Madan Mohan Malaviya has sketched the safeguards. With much of what he has said I entirely associate myself, but that is not the only solitary safeguard. If Engilshmen and Indians put their heads together, sailing in the same direction with no mental reservation whatsoever, it is possible, I submit with every confidence, that we would bring into being safeguards which will be honourable alike to India and to England, and which would be a guarantee for the safety of every British life and the safety of every British interest to which India pledges her honour.

Lord Chancellor, I cannot go further. I tender a thousand apologies for taking up the time of this meeting, but you will understand the feeling that is welling up in me sitting here day after day, and thinking of it day and night, how these deliberations can come to a successful issue. You will understand the feeling which actuates me. It is a feeling of absolute goodwill towards Englishmen, and a feeling of absolute service to my countrymen.

Chairman: Mr. Gandhi, I have listened with very great interest to your appeal, and I want you to be good enough, if you will, to help me personally. I am very much impressed first of all by what you call your dream—I cannot, of course, share your dream—and then I am very much impressed by your ideals. Those I can—perhaps not to the height that you entertain them—share to a

very great extent. I am just as anxious to secure peace and happiness in India as you are, and I am just as anxious as you are and as Lord Irwin is to carry out those conditions which he and you arrived at at the beginning of the year, and which, in paragraph 2, read as follows:—

> "Of the scheme there outlined, Federation is an essential part; so also are Indian responsibility and reservations or safeguards in the interests of India for such matters as, for instance, defence, external affairs, the position of minorities, the financial credit of India and discharge of obligations."

I will ask you to assume that I am just as anxious as you are to carry out that programme. I do not doubt your good faith. I ask you not to doubt mine.

You said, in the course of your remarks, that you hoped that we should be able to teach you the lesson of self-defence. (I am only summing up generally some of the matters that you referred to.) Nobody doubts the bravery of your fellow-countrymen. It has been, through the centuries, manifested on many a stricken field. But supposing it is right, as I think it is, that what you say is correct—namely, that at the present moment the Indians have to learn this lesson of self-defence. I agree with you. I think that is right. Now let me tell you my trouble.

If it is right that at the present moment an Indian Army is not ready for that, you are asking me and you are asking us to take a terrible responsibility when you ask us either to withdraw the Army or to reduce it to such a size as to make it not consistent with safety.

With much of what you say I have the greatest sympathy, but, if you will forgive me for saying so, Mr. Gandhi, the difficulty I feel is the responsibility that I should incur if I were a dictator and said "Tomorrow I will withdraw every English soldier." It would be a terrible risk, and if anything happened to the peace and prosperity of India I for one could never forgive myself for taking a decision to do that when, upon admission, the lesson has to be learned how Indians can conduct their own defence.

It is because I feel that responsibility that, although I like to share your ideals, I feel it is asking me, at any rate, to go beyond what I really ought to agree to. I agree with you, Mr. Gandhi, that what we have to consider here are the interests of India; but give me at any rate the same credit that I give you when I tell you that honestly I do not think it would be in the interests of India to comply with an immediate request to withdraw the Army. It is a responsibility that I think no statesman who has a real regard for the interests of India—forgive me for putting it in that way—could justify himself in assuming. The time may come, and I hope it will . . . . .

Mr. Gandhi : May I just correct you? I have not asked for the withdrawal of the British troops. I do not think that there was

any sentence in my remarks to that effect, and if I did utter a sentence of that character I should like to withdraw it.

Chairman : Will Pandit Malaviya withdraw it also?

Pandit M. M. Malaviya : I have not asked for the withdrawal of all the troops. I said the removal of the internal security British troops should be considered, and that the removal of the rest of the troops should be carried out progressively over a series of years.

Chairman : I should like to ask Pandit Malaviya whether he agrees with the safeguards:—

> " There was general agreement in the sub-Committee that the assumption by India of all the powers and responsibilities which have hitherto rested on Parliament cannot be made at one step, and that during a period of transition the Governor-General should be responsible for Defence."

Do you agree with that?

Pandit M. M. Malaviya : I have said, My Lord, that I would reserve emergency powers to the Governor-General, but I would make the Indian Army Member in charge of the Army responsible to the Legislature. I think the two things can be combined. I have not suggested the withdrawal of all the British troops at once; I have suggested that the internal security troops should be withdrawn, and that a scheme for reducing the rest of them should be drawn up in consultation with experts and public men. I have also mentioned that the Indian Army will remain, one hundred and fifty-eight thousand Indian soldiers officered mainly by Englishmen.

Chairman : Do I understand you to say that it is impossible at present to have a complete withdrawal of the British Army?

Pandit M. M. Malaviya : I do not say it is impossible. I think it is perfectly possible, but we have not asked for it. If I could persuade my English friends that the whole of the British troops should be withdrawn to-day I would do so, but I have not asked for it because I want to carry my English friends with us as far as we can.

Chairman : Well, my final reply to you is that if you would take that responsibility you are a braver man than I am, and, forgive me for saying so, you are not such a cautious man as I am.

(The Committee adjourned at 1 p.m. and resumed at 2.15 p.m.)

Mr. Sastri : I wish, with great deference to Mr. Gandhi, who spoke last, respectfully to dissociate myself and some others on this side from the opinion that he expressed upon the Army question. it requires some hardihood to differ from him on so vital a point, but in justice to ourselves, I think it necessary to reaffirm the position which, early last year, we took upon this matter.

I continue of the opinion that the Army and External Affairs had best remain Crown subjects during the period of transition. It was with great gratification that I listened to the speech of Lord Reading, in which, among other things, he reaffirmed his approval of responsibility at the Centre.

It appeared to me that the amount of responsibility for which we ask, even supposing these two great subjects of the Army and External Affairs excluded, is sufficient to constitute a great improvement on the present situation, and I believe it is an honourable and satisfactory basis for a settlement. The essential fact with regard to the Army which Lord Reading emphasised was that the eventual responsibility for that subject should remain with the Viceroy. We agree that that is an essential feature; but another essential feature that we have to remember is that in as brief a period as is compatible with the efficiency of the Army the transfer should take place from the Governor-General to the Legislature of India, and it was in order to remember during the period of transition that the transfer was to take place that, I think, Sir Tej Bahadur Sapru insisted on the condition that the Army Member should be an Indian. I venture to support that recommendation and to recommend it both to this Committee and to the Government. We are anxious that while the responsibility should rest in the hands of the Viceroy, arrangements should be set on foot and be continually kept in mind which will, at the end of that period, secure the transfer of the Army into capable and trustworthy Indian hands; and I believe that that necessity will be best satisfied under the suggestion put forward this morning by Sir Tej Bahadur Sapru.

Dr. Shafa'at Ahmad Khan : Lord Chancellor, the Muslim Delegation has carefully considered its position with regard to the question of the Army. As was stated by you, a section of the members of the Committee were anxious to express their opinion with regard to Defence and the other questions which will come up for discussion hereafter. We expressed our willingness that the discussion on these four points should proceed, subject to the essential and vital condition that until our demands and safeguards are incorporated in the constitution it would not be acceptable to us. We have felt all along that unless and until the communal question is settled and we know where we stand there is no reality about our discussion in these matters. However, in deference to your appeal and explanations and those of the Prime Minister we agreed to the course which you proposed.

In the circumstances, Lord Chancellor, we reserve our opinion on the question of Defence that is being discussed now.

Sardar Ujjal Singh : If I may be allowed to say a word at this stage, I should like to associate myself with the remarks which have been made by Mr. Sastri and Sir Tej Bahadur Sapru with regard to the question of Defence. I do not want to make any lengthy observations on this question. I agree that Defence

should be a Crown subject for the transitional period, and I would confine my remarks to one or two matters on which I must express my opinion.

The first is with regard to the throwing open of all ranks in the Army to all classes and members of all religions without any distinction. In principle I have absolutely no objection to this. I think that at present the ranks of the Army are thrown open to all classes; there is no disability. I must say, however, that whilst agreeing to this principle it must not be taken to mean that in future a certain portion of the Army will be reserved for certain classes, or that recruitment will have to be made from different parts of India even though the best material may not be available in certain parts. This would mean incurring a great risk, and in the matter of the Army such a risk should never be incurred; the best material whenever available should be taken; recruitment ought to be made on merit and on merit alone.

The second point to which I wish to draw your attention, Sir, is with regard to the pace of Indianisation. A programme of Indianisation ought to be drawn up by some committee here or hereafter, so that, according to that programme we may proceed to Indianise the Army ranks. The Indian Sandhurst Committee which sat last April or May did not satisfy Indian public opinion. They recommended sixty candidates annually for the higher ranks, but at the same time out of these sixty candidates nearly half the number—twenty-eight—were to replace the Viceroy's commissioned ranks, so that in practice the pace of Indianisation of the higher ranks would be the same as exists to-day. We are having twenty-nine candidates now, and if the Viceroy's commissioned ranks are to be filled in future out of those sixty cadets we shall be making absolutely no progress. Some committee ought therefore to be set up to draw up a suitable programme.

H.H. The Nawab of Bhopal : Lord Chancellor, I have very little to say on the question under discussion. We agreed last year to the Thomas Report on Defence, and we adhere both in principle and in the spirit and letter to the policy laid down in Clause 4 of that Report. We should also like to make a special reference to the undertaking given to the States by the Chairman on behalf of the Committee and of His Majesty's Government in Clause 5 of the same document. I think, My Lord, last year there was common agreement that Defence should be a reserved subject. As long as the Crown is responsible for the defence of India, it must determine how it discharges that responsibility and carries out its obligations in that connection. It is therefore for the Crown to judge and decide how far, consistently with its obligations to the country as a whole and to the Indian States, it can meet the various points of view put forward here. This, Lord Chancellor, is the view of the Indian States' Delegation, and the States have nothing more to say.

Sir Tej Bahadur Sapru: My Lord Chancellor, I shall remember the warning that you gave us this morning in regard to economy, and therefore I can promise you that I am not going to make any long speech on this question. I wish to make absolutely clear the position that I have taken up this year, and, if Your Lordship will permit me, I will state it more particularly because Lord Reading made a reference to my position. So far as the two subjects of Defence and External Affairs are concerned, I do not propose, and it was not my intention yesterday when I made my speech, to take up any position in any material degree different from that which I took last year. I recognise that under the scheme which we contemplated last year the two subjects of External Affairs and Defence were to be the special charge of the Crown. The only question therefore which remains when that is accepted is as to how that obligation is to be discharged. I have ventured to suggest only one change this year, and it is that so far as we on this side are concerned, we think—and the reason has been very well put by Mr. Sastri just now—that in order to facilitate an early passage from the reservation of the Crown to the responsibility of the Legislature, it is desirable that during the period of transition the Member in charge of Defence shall be an Indian.

But as regards the ultimate responsibility in respect to Defence, as regards the responsibility of this Minister to any authority, our position remains unaffected, namely—let me explain it as clearly as I am capable of doing—that the responsibility shall be the responsibility of the Crown, that the Army Member shall not be responsible to the Legislature during the period of transition, but shall be responsible to the Crown.

Now, that is exactly the position that I take with regard to External Affairs. So far as External Affairs are concerned, the present constitutional position is that the Government of India Act deals with questions of a political character or foreign character in three sections of the Statute.

I will first of all invite Your Lordship's attention to Section 44 of the Government of India Act. It reads as follows:—

> " (1) The Governor-General in Council may not, without the express order of the Secretary of State in Council, in any case (except where hostilities have been actually commenced, or preparations for the commencement of hostilities have been actually made, against the British Government in India or against any Prince or State dependent thereon or against any Prince or State whose territories His Majesty is bound by any subsisting treaty to defend or guarantee), either declare war or commence hostilities or enter into any treaty for making war against any Prince or State in India, or enter into any treaty for guaranteeing the possessions of any such Prince or State."

I pause there. So far as the powers contemplated by Section 44 (1) are concerned, I contemplate that during the period of transition, when Defence shall be the charge of the Crown, these powers shall continue to belong to the Governor-General.

I come now to the next sub-Section:—

> "(2) In any such excepted case the Governor-General in Council may not declare war, or commence hostilities, or enter into any treaty for making war, against any other Prince or State than such as is actually committing hostilities or making preparations as aforesaid, and may not make any treaty for guaranteeing the possessions of any Prince or State except on the consideration of that Prince or State actually engaging to assist His Majesty against such hostilities commenced or preparations made as aforesaid."

Sub-Section (3) reads as follows:—

> "When the Governor-General in Council commences any hostilities or makes any treaty, he shall forthwith communicate the same, with the reasons therefor, to the Secretary of State."

The Secretary of State means really the Crown.

With regard to sub-Section (2), I propose to effect no changes of a substantial character, but it will be borne in mind that Section 44 deals with the question of war, hostilities, or treaties of a political character entered into by the Governor-General either with the Indian Princes or with any foreign States. It has nothing to do with that class of treaties which are known as commercial treaties or agreements. With regard to that matter I shall presently deal in a slightly different manner.

When we talk of External Affairs, what do we mean? In this connection I will invite Your Lordship's attention to a passage from the Simon Commission Report, Vol. I, page 173. At the bottom of the page there is a description of this subject given and of the machinery which is now working, and if I may respectfully say so this is perfectly correct. So runs the Report:—

> "The Viceroy himself holds the portfolio of the Foreign and Political Department. There is a Secretary in charge of each of the two branches, who holds the rank of Secretary to Government, and sits as a nominated official in one or other House of the Central Legislature. The Foreign branch conducts external affairs and relations with frontier tribes; the Political branch has charge of relations with the Indian States; and its organisation has been already described in an earlier chapter."

So far as the Political branch is concerned, generally speaking it is true to say that it is in charge of matters relating to the Indian States. I venture to think that as the Federal Constitution develops—and we are proceeding on the basis of a Federal

Constitution for the purposes of argument—there is a good deal which is now done by the Political Department of the Government of India which will automatically pass to the jurisdiction of the Federal Legislature, but there will still continue to be a residuum of subjects coming within the general expression of paramountcy for which you will have to make provision. Now, so far as that question is concerned, we on this side are not directly interested in that matter; that is a matter really on which Their Highnesses and their Ministers are entitled to speak with authority, and I will, therefore, not take up the time of this Committee unnecessarily. I imagine that for many years to come, or at any rate for some time to come, matters of paramountcy which will be outside the scope of the Federal Legislature and the Federal Government will continue to occupy the attention of the Governor-General or of the Viceroy. What exactly will be the machinery which the Viceroy will adopt, either in consultation with Their Highnesses or independently, is a matter for the consideration of His Majesty's Government and of Their Highnesses. I venture to express no opinion on that part of the case.

I pass on then to what is known as the Foreign Department of the Government of India. As regards that, I shall invite Your Lordship's attention particularly to a paragraph in the Government of India Despatch. I refer to paragraph 197 on page 173 of the printed Despatch of the Government of India which came to England last year. The position is very accurately described there, and I venture to read it to the Committee. They say there:—

> "The existing position has been described in the memorandum which we submitted to the Indian Statutory Commission on the status and position of India in the British Empire and in the India Office memorandum on the international status of India. It is beyond doubt that there has so far been no delegation of authority to the Government of India in regard to external matters. As regards commercial agreements with foreign countries she has not the power which the Dominions have to enter into direct negotiations. The Government of India Act restricts the power of the Governor-General in Council to make political treaties and forbids the Indian Legislature, without the previous sanction of the Governor-General, to legislate regarding the relations of Government with foreign Princes or States. We do not contemplate that in present circumstances the Government of India could have a decisive concern with those foreign relations which closely overlie the right to make war and peace. On first-class questions of foreign and Imperial policy independent action by India is not yet within the realm of practical politics. India is indeed more continuously and practically concerned with foreign policy particularly in the Middle East than any of the self-governing Dominions."

Now comes an important sentence:—

> "But whatever may be the degree of consultation with the Government of India, and whatever the agency functions which that Government may perform, the decisions must still remain with His Majesty's Government. Nevertheless, there is a large range of external relations which may conveniently be so classed in distinction from foreign affairs, and in which we see scope for an increasing recognition of the individuality of India among the nations of the world."

This last sentence I very strongly support, and I do suggest that if we develop the line of thought contained in this section it should not be beyond the range of possibility—indeed, it is quite feasible and practicable—that a good deal of the work which passes through the hands of the Foreign Department could certainly be transferred to popular control.

For instance, in the very paragraph from which I have just been reading they go on to say:—

> "It may well be that if the purposes of Parliament are defined, as we propose, the Government of India may enjoy considerable liberty in matters such as commercial treaties, and the treatment of Indians overseas."

I will further multiply that; so far as the appointment of commercial agents or trade agents or agents of that class is concerned, there is no reason why they should not be within the control of the Indian Legislature. Similarly, Indian opinion is extremely sensitive with regard to the question of the treatment of Indians overseas. I remember very well—and Lord Reading will probably bear me out—that during his Viceroyalty the question arose as to how the Government of India should deal with the situation affecting Indians in South Africa at that time, and I remember also that it was then for the first time that the Government of India were authorised by the Secretary of State to enter into direct communication with the Government of South Africa.

Now, luckily for us, whatever may be our complaints or grievances against the Government of India, I feel very strongly that so far as the question of Indians overseas is concerned the sentiment of the Government of India has been completely identified with that of its Indian subjects during the last ten years. I think, however, that under the new status which India will acquire under the new constitution it should not be left as a matter of grace to the Government of India, but it should be a part of the constitutional provision that so far as India's responsibility for protecting her nationals across the seas is concerned, that shall be discharged by the Federal Government on behalf of its own nationals and by dealing directly with the Dominions for the protection of its own nationals.

Chairman : I am sorry to interrupt you, but can you just give me a date there? Was it in 1927 that Mr. Sastri was appointed the first Agent-General?

Sir Tej Bahadur Sapru : Mr. Sastri will be able to tell you.

Mr. Sastri : Yes, in 1927.

Chairman : Thank you; that is the date I want.

Sir Tej Bahadur Sapru : Further on, the same paragraph proceeds:—

> "We make no precise proposals in this regard for, whether our relations be with countries within or outside the Empire, we consider that the functions of the Government of India must develop by agreement and convention rather than by the enactment of constitutional provision."

Now, it is only with reference to this sentence that I should like to say that the position, to my mind, is not absolutely clear. I do suggest that howsoever much we may leave to the development of the constitutional position by agreement and by convention, we should make it clear that it shall be within the range and scope of the future Government of India to send its agent across the seas for commercial purposes and to enter into commercial agreements and treaties which its government thinks are best suited to the interests of India, and to take all such other steps as may be necessary on behalf of and for the benefit and protection of its nationals who are in different parts of the British Empire.

Then, My Lord, it says that it is by the growth of understanding and convention and not by provisions of positive laws that the Dominions have attained their present position. Well, putting it generally, this may be an accurate statement, but examined very closely in the light of the positive constitutions of the Dominions, I venture to doubt whether this sentence represents the legal and constitutional position correctly.

Therefore my suggestion is that so far as the Foreign Department of the Government of India is concerned the matters within its charge and control will have to be carefully examined and classified. So far as matters relating to peace and war and treaties of a political character either with Indian Princes or with foreign potentates or foreign States are concerned, I do say that they should belong exclusively to the Governor-General during the period of transition, and I impose no restriction upon the power of the Governor-General to select his own Agent or his own Minister for the discharge of those obligations. But as regards other matters which are treated generally as Foreign, but which really affect the national or commercial life, I say they should be within the scope of the Legislature.

My Lord, there is only one thing more that I will say, then I will conclude. May I invite Your Lordship's attention to another provision of the Government of India Act to show what exactly is

the position. If Your Lordship will turn to Section 67 (2), it says:—

> "It shall not be lawful, without the previous sanction of the Governor-General, to introduce at any meeting of either Chamber of the Indian Legislature any measure affecting . . . . .
>
> (*d*) The relations of the Government with foreign Princes or States."

I venture to think that during the period of transition, when the Governor-General as representing the Crown will be responsible, this Section or something to that effect will have to stand.

Then I come to Section 67A (3):—

> "The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either Chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs."

Then you come to sub-Section (*v*) (*b*) "political."

This again will have to be very carefully examined and dissected and the content of the word "political" will have to be classified under two groups. Some of them will have to be outside the jurisdiction of the Legislature, while others will remain within the jurisdiction of the Legislature. These are the important Sections of the Government of India Act which bear on this matter. My Lord, I therefore say that that is the position that we on this side take.

Now may I in this connection invite Your Lordship's attention to paragraphs 11 and 12 of the final Report of the Round Table Conference. Your Lordship was pleased to refer to paragraph 11 this morning, and particularly to the safeguards during the period of transition which are summed up there. First of all it says:—

> "The Governor-General shall be responsible for Defence and External Relations (including relations with the Indian States outside the Federal sphere)."

I do say that I stand by it and affirm it.

Then, secondly, it is stated:—

> "In certain situations, hereafter specified, which may arise outside the sphere of those subjects, the Governor-General must be at liberty to act on his own responsibility, and must be given the powers necessary to implement his decisions."

I also stand by that.

Then paragraph 12 goes on—and I particularly invite the attention of Lord Reading to it and ask him to consider whether he

thinks that in substance I have departed from the recommendations of it, or whether it is not the fact that the recommendation made in this paragraph has yet to be considered—as follows:—

> "It was generally agreed that the presence of a person occupying the position of a Minister would be necessary to express the views of the Governor-General on Defence matters in the Legislature, since these will impinge upon strictly federal matters."

I do not take exception to that sentence. It continues:—

> "The same is true of External Relations, but there was not an equal measure of agreement with regard to the appointment of a person to represent the Viceroy in this latter subject."

It is open to you to have a separate Member for External Affairs or to place External Affairs in charge of some other single Member. Then the paragraph proceeds:—

> "It is clear, however, that the Governor-General must be at liberty to select as his representatives in the reserved sphere any persons whom he may himself choose as best fitted for the purpose, and that on appointment they would, if holding Ministerial portfolios, acquire the right, like other Ministers, of audience in either Chamber of the Legislature."

I also stand by that. I am imposing no restriction upon the Governor-General except in one respect with regard to the Defence portfolio. He may select an Indian non-official Member of the Legislature in order to give him a chance of acquiring inside knowledge so that the passage of responsibility may be facilitated and expedited. Otherwise, so far as the substance of the machinery and procedure provided is concerned, I have made absolutely no change.

The paragraph continues:—

> "The suggestion was pressed that any persons so appointed should be regarded as ordinary Members of the Council of Ministers, notwithstanding that they would be responsible to the Governor-General and not to the Legislature, and that they should be regarded as liable to dismissal (though they would remain eligible for re-appointment by the Governor-General) with the rest of their colleagues."

May I remind you that the reservation made by me last year received a considerable measure of support from Lord Reading, who said, when it had been criticised by another member as ridiculous, that after having given the matter very careful consideration, he had come to the conclusion that the scheme that I suggested was by no means unworkable, and in fact he supported it.

Paragraph 12 proceeds to say—and this is the passage which requires consideration:—

> "It is difficult, however, to see how this position could be reconciled with the principle of the collective responsibility of Ministers, and the sub-Committee find themselves unable to come to any definite conclusions on the matter, though they are of opinion that it merits much more careful examination than they have, in the time at their disposal, been able to give to it."

Mr. Gavin Jones : Do I understand that Sir Tej Bahadur Sapru would agree that the Minister for Foreign Affairs shall be responsible to the Governor-General both for policy and administration?

Sir Tej Bahadur Sapru : Yes, that was my meaning.

Mr. Gavin Jones : What about the Army? Do you agree to that too?

Sir Tej Bahadur Sapru : Yes, that the Army Member shall be responsible to the Governor-General and not to the Legislature. The Legislature shall not be at liberty to dismiss the Member.

I stand by the reservation I made last year, namely, that we must establish the principle of collective responsibility in the Federal Legislature, that so far as the subjects outside go, the Army Member should stand also with the rest of the Council, but that with regard to matters which are peculiarly within his jurisdiction, he shall be responsible to the Governor-General, to the Governor-General alone, and not to the Legislature.

It was said in criticism of my proposal last year, and I believe it was Mr. Sastri who said it, that it was not right and fair that this poor, innocent Army Member should suffer for the fault of any other Minister. My answer to that is that that happens every day in the case of collective responsibility. The only anomaly is that the Army Member shall be appointed by, and shall be dismissible by, the Governor-General, but that is inevitable if you want really to have Ministers and Councils representing these portfolios, and not secretaries or other officials. We have got to put up with that anomaly during the period of transition until the position is regularised.

I have nothing more to say.

* * * * *

Sir Muhammad Shafi : Sir Tej Bahadur Sapru spoke of collective responsibility just now. Does he mean that the Minister in charge of Defence and Foreign and Political Affairs, although he may be responsible both for policy and administration to the Governor-General and not to the Legislative Council, yet will have collective responsibility along with the other members of the Cabinet in relation to these matters? Does he mean that?

Sir Tej Bahadur Sapru : In relation to other subjects. That is the position that I took last year, and that is the position from

which you differed. Unfortunately it so happens that I have not changed my opinion.

Sir Muhammad Shafi : That is not a clear answer to my question; but still, I am satisfied with it.

Chairman : Would you mind repeating your question? Then I shall understand it.

Sir Muhammad Shafi : My question, Lord Chancellor, is this. Does my friend, Sir Tej Bahadur Sapru, mean that although the Minister in charge of Defence and Foreign and Political Affairs will, with regard both to policy and administration, be responsible to the Governor-General and not to the Legislature, nevertheless there will be a collective responsibility of all the members of the Cabinet, including this Minister, to the Legislature?

Sir Tej Bahadur Sapru : My answer to that is this. I contemplate that the Executive Council of Ministers of the future will take collective responsibility in its dealings with the Legislature, on the principle that they must present a united front to the Legislature. If a question arises relating to the Army or to Defence or to Foreign Affairs, on which the Legislature records an adverse vote against the Member in charge, then he shall not resign on that issue; but inasmuch as he shall be equally entitled to take part in the general discussion on other matters than Defence and Foreign Affairs, if the Ministry of the day is thrown out by an adverse vote of the Legislature, he too shall go out, though it shall be open to the Viceroy the very next day when the Ministry is formed, or sometime afterwards when the Ministry is formed, to re-appoint that very individual.

Mr. Jinnah : There is collective responsibility.

Sir Tej Bahadur Sapru : Yes, Sir, during the period of transition.

Mr. Iyengar : Lord Chancellor, After the clear exposition of Sir Tej Bahadur Sapru with regard to his proposals on External Affairs I shall content myself merely by elucidating my position with reference to what the Congress has asked for—namely, control over external affairs in a responsible Cabinet, and what the present position is.

In doing that, you will permit me to say that what we envisage as part of the full responsible constitution for India is that India should have the same powers and the same status and the same responsibility in respect of external affairs as are now in existence in the Dominions, and, therefore, I propose, with your permission, to examine what really is the present position and what we desire, in the pursuit in this full and equal Dominion Status, that we should have in our constitution. I shall also attempt to point out that, so far as external affairs are concerned, whatever may be the difficulty in regard to the control of the Army and the difficulties of immediately providing a national army, the question is a very much simpler one in regard to external affairs, and can give rise to no constitutional difficulties.

To-day India has already a certain international position of its own, in virtue of the fact that, under the terms of the Treaty of Versailles, it became an original Member of the League of Nations. India, again, is a member of the Imperial Conference, and has taken its place in the same manner as other countries at successive Imperial Conferences; and in both the Conferences of the League of Nations and of the Imperial Conference Delegates from both British India and the Indian States have represented India.

Chairman : I looked this point up last night, but for the moment I have forgotten it. What was the first Imperial Conference that an Indian attended?

Sir Tej Bahadur Sapru : It was in 1921.

Chairman : I was not sure whether it was in 1921.

Sir Muhammad Shafi : There was an Imperial War Cabinet in 1918.

Sir Tej Bahadur Sapru : That was different from the regular Imperial Conference.

Mr. Iyengar : The Imperial War Conference was another matter.

Sir Muhammad Shafi : The date should be 1919. Lord Sinha first came to the Imperial War Cabinet, and was then on the Imperial Conference. That was in 1919.

Lord Reading : He was on the Imperial War Cabinet in 1917.

Sir Muhammad Shafi : 1918 was the Imperial War Cabinet.

Mr. Iyengar : Then in both of these organisations of an international character India's position to-day is vitally affected by the fact that its Delegation does not speak for a Government that is free; they are subject to the instructions and control of a British Secretary of State in Downing Street.

Mr. Joshi : Not in Downing Street.

Mr. Iyengar : In Whitehall.

Chairman : You are only 20 yards out!

Mr. Iyengar : India to-day, therefore, does not exercise in her general international relations the rights which the self-governing Colonies have acquired. What I claim on behalf of the Congress is that India should be put, in regard to these matters, in the same position as the Dominions; and what that position is has, of course, been very clearly defined in the words of the Balfour Report. We want to be " an autonomous community within the British Empire, equal in status, in no way subordinate one to another in any aspect of our domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations." Therefore, the position in regard both to the Imperial Conference and to the meetings of the League of Nations that are held annually and all the ancillary conferences, is that India has obtained a certain status which for all purposes has been, so far as outsiders are concerned, that of equality with other members of the League or of these conferences. The

present position in so far as the legislative competence of the Indian Legislatures is concerned is that in all matters relating to foreign affairs or political affairs the previous sanction of the Governor-General is necessary before the Legislature passes any such enactment. Therefore, as to the juridical status of the Indian Government I do not see that it differs in any important respect from the juridical status occupied by the Dominions in respect of what may be called the legislative authority or provisions that may be necessary to implement international obligations.

As the Balfour Report points out, My Lord, the principle of equality and similarity appropriate to status do not universally extend to function and in particular in relation to foreign affairs, questions of diplomacy may also require flexible machinery, machinery which can from time to time be adapted to the changing circumstances of the world. What we here ask, My Lord, is that this flexible machinery should now be established as part and parcel of the grant of full responsible government to my country. It is no doubt true, as the Balfour Report itself points out, that all the Dominions have frankly recognised that in the sphere of foreign policy, as in the sphere of defence, the major share of responsibility rests now and must for some time continue to rest in His Majesty's Government of Great Britain; nevertheless practically all the Dominions are engaged to some extent and some to a considerable extent, in the conduct of foreign relations, particularly those with foreign countries on their borders.

Now, My Lord, if we proceed to examine from this standpoint what is the position and the rights which the Government of India as such has acquired in regard to treaties and other matters, I would invite Your Lordship's attention to a resolution which was adopted by the Imperial Conference in 1923, to which India was also a party. It reads as follows:—

> "This Conference recommends for the acceptance of the Governments of the Empire"—

and I believe that includes the Government of India—

> "that the following procedure shall be observed in the negotiation, signature, and ratification of international agreements."

And we find under the head "negotiation" the following clause:—

> "It is desirable that no treaty should be negotiated by any of the Governments of the Empire without due consideration of its possible effect on other parts of the Empire, or, if circumstances so demand, on the Empire as a whole."

Then there are various provisions with reference to the manner in which these consultations should take place between various Governments before treaties are made or ratified, or before particular parts of the Empire require treaties to be made with their neighbouring countries. I do not want to detain the Committee with all those details. What I am now desiring to point out is that in regard to

all these matters I do not see that there is any inherent incapacity in an Indian Cabinet being able to deal with them, nor do I see that any of the resolutions of the Imperial Conference, or any of the other principles which have been established in connection with the proceedings of the League of Nations, would impose any disability upon the Indian Government as such, a Cabinet Government, from dealing with those questions. Therefore I desire that we should be placed in exactly the same position as that in which the Dominions are placed in respect of all these matters. There are, of course, many questions of diplomatic and foreign relations connected with what we may call high imperial policy or the larger foreign policy of the Empire in which I am sure India will follow the line of Great Britain in most matters; but there is absolutely no objection, there can be no objection, to our being placed in the same position as the Cabinets of other Dominions.

The other question concerns the relations which the future Indian Government should have with Indian Princes. That, I think, is a question which, in the scheme we contemplate, will soon become a matter of the past. If the Indian States as a body come into the Federation, then, as Sir Tej Bahadur Sapru properly pointed out, many of the matters which now come under the control of the Foreign and Political Department will necessarily come under the joint control of the Indian States and ourselves under a Federal Government. With regard to matters of paramountcy, in which the Indian States have insisted that they shall continue to be controlled by the Crown, I am prepared, speaking for myself—not on behalf of anybody else—that that method shall continue so long as the Princes desire; and so long as their coming into the Federation is made conditional upon it I am willing to leave it to their choice, but I hope that they will soon see that the best method of dealing with these questions is that they should come unreservedly into the Federation.

I find, in respect of other international matters—matters, for instance, with which the League of Nations is concerned—that India already exercises a good deal of individuality and independent status as do other Dominions. I have here before me a number of instances in which the Indian representatives at the League of Nations took an independent line—for example, at the Washington Labour Conference in 1919, at the General Maritime Conference in 1920, at the International Labour Conference in 1921, and also in respect of the Barcelona Transit Convention, the Convention for the Suppression of Traffic in Women and Children in 1921, and in other instances.

Chairman : I want to ask this question, Mr. Iyengar. I do not know whether you have had time to give thought to it. How far, in your opinion, might the economic and other relations of India with the outside world affect their political relations?

Mr. Iyengar : I am afraid I have not thought sufficiently about that subject to give an opinion on it at the moment. I might also mention that in the First Committee of the First Assembly of the

League of Nations in 1920, India and Australia voted in a minority as against Great Britain and other Dominions on the method of election of the non-permanent members of the League Council. At the League of Nations, particularly in matters respecting labour questions, the Indian representatives have been allowed by Whitehall the freedom and independence of action which clearly shows that there is absolutely no difficulty in investing powers in such matters as arise out of League of Nations issues in a responsible Cabinet.

My friend, Sir Tej Bahadur Sapru, has also pointed out that it will be necessary in the constitution that any responsibility with regard to commercial treaties or the appointment of trade commissioners and the like will be the responsibility of the Indian Minister responsible to the Legislature, who should be in a position to carry forward the policies which are essential for the National Government.

If that is so we are left only with the larger questions of foreign policy, say of making peace or war, and of our relations with the neighbouring States, on which the necessity for continuing the control of these matters in the hands of His Majesty's Government or the Crown is sought to be insisted on. So far as that is concerned, I am clear that even on those matters I cannot see where the special advantage lies in those matters being in the special care of the Government's officers in Whitehall rather than in the hands of His Majesty's Cabinet in India, if I may say so. The Governor-General, of course, will be in charge of foreign and political affairs, but he has got to be advised by somebody, and I think it would be all to his advantage if that advice was given, especially in regard to foreign affairs, by a gentleman who is a responsible member of a responsible Cabinet in India.

I do not want to enlarge on this matter, My Lord, but I feel——

Chairman : What is your attitude towards Section 44 of the Government of India Act in those circumstances? Do you accept Section 44, as Sir Tej Bahadur Sapru does, or do you say you do not accept Section 44?

Mr. Iyengar : No, Sir, I do not accept Section 44, for this reason. Either this power is going to be in the hands of the Governor-General, or it is going to be in the hands of the Governor-General in Council. I take the words " Governor-General in Council " to mean the Cabinet. The words " Governor-General " mean the Governor-General independent of Cabinet. Now, this Section not only imposes a restriction on the Governor-General in Council, but it also imposes the authority of the Secretary of State in Council for certain matters. What I am saying is that we are now up against the domination of Whitehall, and if that is removed all that I say is that our position in regard to the control of foreign policy shall be the same as that which His Majesty's Government may exercise in respect of foreign policy relating to the Dominions. I do not see why it becomes particularly necessary that that control

should be specially tightened by the maintenance of a special agency in Whitehall for Indian affairs only, and I therefore think it is one thing to say that the Governor-General shall be advised by somebody who is not responsible to the Legislature in respect of matters of foreign policy; it is another thing to say that the Secretary of State in Council shall from London dictate to the Governor-General in India what should be the policy.

Sir Samuel Hoare : And do you not think, Mr. Iyengar, that the question of defence is bound to react in the transitional period on the question of foreign policy?

Mr. Iyengar : Yes, certainly.

Sir Samuel Hoare : You see, the practical difficulty is this. It is admitted, anyhow by a great many members of the Committee, that in the transitional period defence has to be a reserved subject. It does appear to me, as a question of practical politics, very difficult to have foreign affairs a responsible portfolio with defence still a reserved subject. It seems to me that the two react very much together. I would have suggested for your consideration that probably the line with foreign affairs is the line that has actually been drawn in practice in past English history—namely, the powers that appear to be very formidable, and they would be very formidable if they were exercised rigidly by Whitehall gradually falling into desuetude, and probably you would find that gradually in the transitional period, although under the letter of the law full powers might remain in Whitehall for a minute direction of Indian foreign policy, if things were working well those powers would gradually fall into desuetude. That, I would suggest, has been generally the history of government in many parts of the British Empire, and it may well be the line of least resistance in dealing with what is a very difficult constitutional problem.

Mr. Iyengar : I entirely agree, My Lord, that defence and foreign policy go together. We have claimed that defence should be put under the control of the Legislature, and if the two go together it would be of advantage to have foreign affairs under the control of the Legislature rather than outside its control.

What I am referring to is this. After all, foreign policy is the special preserve of the Crown even in England, and the technical part of the responsibility of the Crown to declare war or peace has always been controlled by the actual responsibility of His Majesty's Government to Parliament. Similarly, I have just read a passage in the Balfour Committee's Report to show that even in the Dominions, in respect of what may be called the major issues of foreign policy, the Dominions will for a long time have to leave to His Majesty's Government here the conduct of those important questions of foreign policy. What I am saying, however, is that where the Colony or the Dominion finds its interests directly affected and wants to have a voice in the matter, it is far better that that function should be discharged by a Minister responsible to the Legislature who will be in a position to implement all those obliga-

tions which may be undertaken as a result of the foreign policy which may be adopted.

Chairman : I follow. Thank you, Mr. Iyengar.

Mr. Wedgwood Benn : I should like, if I may, to make three observations of a practical kind. In the first place, I assume that so far as a tariff is concerned in India—this is really relevant in a way—the Government's view would be that the tariff will pass under the control of a responsible Commerce Minister. The working of the Tariff Autonomy Convention, however honourably it may have been carried out in this country, does present difficulties, and no doubt both from the Indian and from the British points of view the appearance of a responsible Commerce Minister in India would be a great advantage.

Germane to that comes the question of commercial agreements, and with regard to that subject I will make only this observation, namely, that the situation has entirely changed by the alteration in policy in this country. It might have been a different matter for a government which used no tariffs to control the commercial agreements of India, but it would be another matter altogether if this country adopts a tariff policy which is intended to protect a United Kingdom interest, and also claims the right to make commercial agreements for India on her behalf as well. It would lay them under the suspicion, undoubtedly, of making commercial agreements in such a way as to favour their own tariff policy.

The third point I wish to make is this. I consider from practical experience that it would be a great advantage if the interests of Indians overseas could be handed over to a responsible Indian Minister. It is a heavy charge, as I think Sir Samuel Hoare will agree, that now lies on the shoulders of any Secretary of State or on the Government of India, who whole-heartedly champion the cause of overseas Indians. It is a very heavy responsibility, and it would be a lightening of that burden as well as an advantage to India if a responsible Minister in India could be created to take charge of the interests of expatriated Indians. I make those three observations, which I believe to be entirely in line with Government policy. There may be difficulties I have overlooked, but I make those general observations because I think they represent the right course to follow.

Sir Samuel Hoare : I do not at all admit the second of Mr. Wedgwood Benn's contentions; it does not seem to me that the economic policy of this country has anything at all to do with the way in which we should deal with Indian questions. We have shown our *bonâ fides* in the past by the way we have carried out the Fiscal Autonomy Convention, and equally we shall show our *bonâ fides* towards India whatever may be our fiscal policy here.

Mr. Wedgwood Benn : My point is that if you have a tariff policy in this country and use it as a weapon of negotiation with other countries, it will be difficult to differentiate your interest in that respect from the manipulations of a tariff in India which is

intended to be solely in the Indian interest. The position is entirely altered if a system of tariffs is adopted in this country.

Sir Samuel Hoare : I do not want to enter into a discussion on tariffs with Mr. Wedgwood Benn, and I would only say that I do not agree with my Right Honourable friend's point of view.

(The Committee adjourned at 3-40 p.m.)

PROCEEDINGS OF THE FORTY-EIGHT MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON WEDNESDAY, 18TH NOVEMBER, 1931, AT 11 A.M.

* * * * * * *

The Inclusion of Labour in the Schedule of Federal Subjects and the Ratification of International Labour Conventions.

Mr. Joshi : I thank you, Lord Chancellor, for giving me this opportunity of placing before this Committee the subject of Labour. I propose to raise two questions, My Lord. The first question is that the Federal Legislature should be empowered to deal with Labour questions, and the second question with which I propose to deal is that the Federal Government and the Federal Legislature should also be empowered to deal with the question of the ratification of International Labour Conventions. These subjects were not dealt with—at least adequately—by the last Session of the Federal Structure sub-Committee.

Chairman : I am very sorry, Mr. Joshi, but I was thinking of something else for the moment. Would you just repeat those two questions quite briefly, because I am most anxious to follow you?

Mr. Joshi : I propose first to deal with the question of the Federal Legislature being empowered to deal with Labour questions, and secondly, the question that the Federal Government and the Federal Legislature should also be empowered to deal with questions arising out of the ratification of International Labour Conventions. These questions were not adequately dealt with last year and in the early part of this year when the first Round Table Conference met. The principles of the question were indirectly, in my judgment, discussed when we discussed the question of Customs; and the principle of the second question was partly discussed yesterday by Sir Tej Sapru when he argued the question of External Relations as regards economic matters.

My Lord Chancellor, in the Report of the Federal Structure sub-Committee presented at the last Session, Labour questions such as factories, the settlement of Labour disputes, and welfare, as given on page 287, have been made Provincial subjects subject to Central legislation; but the Committee also has suggested that the Provincial Legislatures should have concurrent powers of legislation, the previous sanction of the Governor-General not being required in the case of Provincial legislation. This is in the list of Provincial subjects—List C, Item 26. This is what has been proposed by the Federal Structure sub-Committee.

In my judgment, Lord Chancellor, the best arrangement will be that both the Federal Legislatures and the Provincial Legislatures should have power to deal with Labour questions.

They should have power to legislate on Labour matters and also to administer this legislation. In the case of Provincial legislation it will, of course, be administered by Provincial Legislatures and Provincial Governments. In the case of federal legislation it may be, according to the nature of the legislation, administered by the Provinces and other constituent Units of the Federation, or it may be administered by the Federal Government itself.

The defects of the arrangement proposed by the Federal Structure sub-Committee are two. In the first place they do not enable the Federal Legislature to pass legislation on Labour questions. I shall deal with this a little later on. The second defect is that if you leave Labour legislation to the Centre and leave the administration to the Provinces, there is a likelihood of difficulties arising, especially as regards the financial matters. The Central Legislature may pass legislation and expect the Provincial Governments and Provincial Legislatures to spend money. Naturally there will be difficulties when one Legislature passes legislation and expects the other Legislature to spend the money.

There may be other difficulties also, because we have among the federal subjects such subjects as Railways, Port Trusts and Shipping. The administration of Labour laws as regards these will also be a difficulty. I shall deal with those difficulties a little later on. But I feel that if you leave the administration to Provinces and the legislation to Central, there is bound to be a difficulty, especially a difficulty as regards finances. The financial difficulty in my judgment to some extent would be overcome by giving power to the Federal Government and the Federal Legislature to spend money on the legislation which they would pass, even though the administration may be Provincial. According to the present Government of India Act the Government of India is not able to spend money on those subjects which are Provincial, although the legislation is Central. This has created some difficulty even under the present constitution, and the difficulty may be increased unless we empower the Federal Government to spend money on Labour questions. Especially on those questions on which the Federal or the Central Legislature legislates there will be difficulties.

At this stage, Lord Chancellor, I do not propose to disturb the whole arrangement proposed by the Federal Structure sub-Committee. They may keep the administration Provincial, but they will have to give power to the Central or the Federal Government to spend money on those matters on which they would legislate. This would to a great extent obviate the difficulties that may be caused by the Central Legislature and the Federal Legislature legislating and asking the Provinces and the States to administer the legislation.

Lord Chancellor, I shall now deal with the second defect of the present arrangement, namely, that Labour questions should be within the purview of the Federal Legislature. My reasons for proposing that Labour legislation should be federal in the sense that the Provincial Legislatures would have also power, while the Federal Legislature would also have a similar power to legislate, are these. When I say that Labour should be made a federal subject, I do not mean that the power of the States and of the Provinces to legislate and to administer Labour matters should be taken away. The powers should be concurrent. The reason, Lord Chancellor, is that Labour legislation by its very nature must be federal. When we make Customs and Tariffs federal, the principle is the same.

If you allow the different constituent Units of the Federation to impose tariffs or customs amongst themselves and against each other, you give protection to industries in one part of the Federation against those in another; but the same kind of protection is indirectly given to industries in one part of the Federation by allowing that part to have no legislation on Labour matters. I do not suggest that Labour legislation necessarily means an increased cost of production, but also I do not deny that in some cases Labour legislation will mean increased cost of production; and, if the cost of production in one part of the Federation is increased on account of Labour legislation, then to that extent the industries in that part of the Federation where there is no Labour legislation will get protection against the other part.

This is a principle which can be easily understood, and we accepted this principle when we made Customs and Tariffs a federal subject. We also accepted this principle when we discussed the question of Federal Finance, inasmuch as we accepted the principle that one part of the Federation should not create trade barriers against the other parts of the Federation. We have therefore accepted this principle. It was on account of the same principle that the necessity was felt for the creation of the International Labour Organisation. The principle is the same, namely, that Labour legislation in one part of the country, or even in one part of the world, cannot progress beyond a certain limit unless the other parts are also willing to make progress.

The difficulties are created even to-day, and we are quite sure that if Labour legislation remains on different standards in the Indian States from British India, there is a danger and a likelihood of industries passing from one part of the country to the other.

Moreover, Lord Chancellor, we have made Ports, Shipping and Railways federal subjects. Now, there are a large number of workers engaged in ports, engaged in shipping and engaged on the railways. You cannot have Labour legislation which may be passed by the Central Legislature but administered provincially, which is not federal; if Labour legislation as applied to these workers is not federal, there are bound to be difficulties. You may have a railway line which passes through British India and also

through the territory of Indian States. If the hours of work on that railway are controlled in British India but not in the States, as soon as a driver enters the territory of an Indian State he will not be subject to any Labour legislation, and that is bound to create a difficulty. In the same way, if workers working in the Port of Bombay are protected by legislation, and if workers working in the Port of Bhavnagar are not protected, then the port charges in Bombay are likely to be higher than similar charges in Bhavnagar, and the port traffic is likely to pass through Bhavnagar. The same principle applies to seamen.

I therefore feel that the right solution, when we have such subjects as Railways, Shipping and Ports federal, is that the Federal Government should be empowered to deal with Labour legislation.

The Whitley Commission considered this question, and came to the conclusion that the right way of dealing with this question is to make the subject a federal one, although the Commission felt some difficulty in making a positive recommendation on account of the fact that the Commission was appointed to deal with conditions arising in British India alone. This is what they say at page 474 of the Whitley Commission's Report:—

> "So long as there exist side by side areas in which legislation is comparatively backward, there will be a handicap to progress in the rest of India. There are, therefore, good grounds for making labour legislation both a federal and a provincial subject."

The Commission point out that there are other difficulties existing in the Punjab and in Rajputana, where there are States which have got no legislation and there are British territories which have got legislation on this subject. Lord Chancellor, if you do not make Labour legislation federal the protection given by the International Labour Organisation to Labour in India will also be to some extent reduced. At present India ratifies certain conventions of the International Labour Organisation, and to that extent workers in India get protection from these conventions, but if we have a federal constitution where the Federal Government will not have power to ratify conventions the protection will be less, because the constitution of the International Labour Organisation states this at Section 405 of the Peace Treaty, Subsection (9):—

> "In the case of a federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in such case."

The difference between a recommendation and a convention is that in the case of a convention, when a Government accepts it, the whole convention, both in letter and in spirit, is applicable to that

territory, but in the case of a recommendation the action is optional; it is left to the option of the Government; whatever action the Government think wise to take they may take; they are not bound to take any particular action in the case of a recommendation. In the case of a convention they must take action in accordance with the letter of the convention. So in the case of a federal constitution where there is no power in the Federal Government to ratify conventions and pass legislation to implement those conventions, the protection to the workers from the International Labour Organisation becomes less.

Now, this difficulty created by Labour legislation not being made federal has been felt in other federal countries. Take, for instance, Canada and the United States of America. In Canada the Labour legislation is a provincial subject, but there were many occasions, and especially now, under the present conditions of trade depression, on which the Governments have begun to feel difficulty.

In the first place, in the matter of trade disputes they passed a Canadian Act which applied to all Canada, because they felt that such an Act was absolutely necessary, and that there was the necessity of having one Act. Unfortunately, on account of the constitutional difficulties, that Act, although it remained on the Statute Book for many years and was put into practice for many years, has now been declared invalid.

Moreover, the Canadian Government also thought it necessary to have one legislation for Health Insurance. They could not pass one legislation for the whole of Canada, so they had to allow the Provincial Governments to pass laws on health insurance. The Provincial Governments could not finance the Health Insurance Act. Therefore the Federal Government contributes money to the Provincial Governments which pass legislation on health insurance; with the result that, although taxation is paid by all the Provinces in Canada, out of that taxation contributions are paid only to those States which pass legislation on health insurance. Therefore those Provinces which do not pass legislation on health insurance pay taxes to the Federal Government but do not get the benefit of them.

At present, on account of the unemployment there, the Federal Government of Canada is considering ways and means of getting over the difficulty of dealing with unemployment, because unemployment cannot be dealt with provincially; it must be dealt with by the National Government, and they have no power to do it at present.

Similarly, in the United States they find it difficult to pass certain Labour legislation, with the result that there is a danger felt by those States in the United States which have got such legislation that their industries will pass to other States. For instance, the Western States—what is called " New England "—which have got better legislation are complaining, and are asking their States to repeal the legislation in order that those States

should be able to compete with the industries in the Southern States, because industry is passing from New England to the Southern States of the United States.

Therefore both Canada and the United States have experienced this difficulty.

Canada has also experienced difficulties in the matter of the ratification of conventions. I stated in my speech in the Plenary Session last year that while India, which is industrially more backward than Canada, has ratified eleven conventions of the International Labour Office (because India had a unitary form of government) Canada and Australia have only ratified four conventions, and the only conventions which they have ratified concern maritime workers; they could not ratify conventions dealing with other workers at all.

Lord Chancellor, it is for these reasons that I feel that Labour legislation must be made federal.

There is one other thing I wish to say. On this point the States really need have no fear of British India being ranged against Indian India, because if you pass any piece of Labour legislation there will be no separate interests of British India against the States. The Legislature, if it is divided, will be divided according to the interests—the employers and those who sympathise with the employers, and Labour and those who sympathise with Labour. Therefore there is no danger of British India being ranged against the Indian States at all. Moreover, I have absolutely no doubt that in the case of Labour legislation being made federal, even the employers will agree with me that the legislation must be made a federal subject.

My Lord Chancellor, there is one question which arises as regards Labour being made a federal subject, and that is that on the whole there are many people who say that Provincial Councils will be more democratic than the Federal Legislature. I feel that a Provincial Council will be more democratic than the Federal Legislature, and may be more willing to pass legislation favouring Labour. But at the same time we have to remember that we are not preventing Provincial Legislatures from passing Labour legislation; we are giving them the power; but the experience of the world has shown that, although Provincial Legislatures may have the willingness and the desire to pass legislation, they will not be able to get over the difficulty caused by Labour legislation not being passed simultaneously.

It is on account of these reasons, Lord Chancellor, that I propose that the Federal Legislature should be empowered to pass legislation on Labour matters, and should be enabled to spend money on Labour subjects.

Now, Lord Chancellor, I shall turn to the other subject, namely, the ratification of international conventions. The present position is that India as a whole is a member of the League of Nations. But it is only British India that takes part in the conferences of

the International Labour Organisation. Although India as a whole is a member of the League of Nations, it is British India alone that ratifies the conventions. My Lord Chancellor, this procedure is an irregular one. British India alone cannot ratify conventions. If conventions of the International Labour Organisation are to be ratified, they must be ratified by the whole of India. But although this procedure is an irregular one, the irregularity is tolerated because it is neither the interest of the International Labour Organisation nor the interest of the workers in India to create a difficulty and prevent ratifications, a result which will happen if we insist upon the whole of India ratifying conventions. But this difficulty will be removed when we have a Federal Government and a Federal Legislature. We shall have a Government and a Legislature that will deal with the whole of India. The present difficulty caused by the Government of India not having power to deal with Labour matters as regards the Indian States will be removed when we have a Federal Legislature and a Federal Government that will be able to deal with Labour matters. Therefore the present anomaly of British India alone ratifying the conventions need not be continued.

Under the present constitution proposed by the Federal Structure sub-Committee there is no mention made as to which is the authority which is to ratify the conventions of the International Labour Organisation; but I take it that, as external matters are left to the Crown to be dealt with, the ratification of the international conventions will be a Crown subject. Lord Chancellor, this creates a difficulty. The Crown will have the power of ratifying the conventions passed at the International Labour Conference, but we are not leaving it to the Crown to legislate on Labour matters. The Crown cannot ratify conventions and not be able to implement these conventions—because the Crown will have no power to legislate on Labour matters. Therefore the proper authority for ratifying conventions is the Federal Government and the Federal Legislature, which should be empowered to pass legislation on Labour matters. Lord Chancellor, if India, on account of the present constitution as proposed, is unable to ratify the conventions of the International Labour Conference—which will happen if we leave the ratification in the hands of the Crown, which will have no power to legislate on Labour matters—India will very much lose its prestige in the international world. At present, especially in the International Labour Organisation, India has got some prestige as leading the Asiatic countries in the matter of Labour legislation; but if India is unable to ratify a convention, India will lose that prestige; and, not only that, but on account of India being unable to ratify conventions of the International Labour Organisation, both Japan and China will not ratify conventions of the International Labour Organisation.

Moreover, if we are unable to take an effective part in the International Labour Organisation, our political status to a great extent will suffer internationally, which is a result that none of my countrymen would like to produce. I therefore feel, Lord

Chancellor, that the ratification of international conventions should be a subject within the power of the Federal Government and of the Federal Legislature.

Lord Chancellor, I have now done, but before I close I wish to state what my exact proposal is. My proposal is, in the first place that the Provincial Legislatures should be empowered to legislate as well as to administer legislation on Labour questions. At the same time, the Federal Legislature should also have power to legislate on Labour matters, and the administration of the legislation should be left to the States and to the Provinces with one reservation, namely, that the Federal Government should have power to spend money on matters which are dealt with by the Federal Legislature.

My second proposal is that the ratification of international conventions should be a matter within the authority of the Federal Government and the Federal Legislature

Chairman: Thank you, Mr. Joshi. I should just like to make one or two remarks upon each of the points that you have raised. You have advanced your ideals, namely, that Labour legislation should be within the purview of the Federal Legislature. You have advanced not only the ideals, but the arguments which you said, quite rightly from your point of view, ought to induce that state of things to come to pass.

I suppose that anybody who was entrusted with the drafting of a federal constitution for India would start in this sort of way:—

> "The Indian Federation to be established by Royal Proclamation, issued with the advice of the Privy Council, declaring the establishment of Federation on an appointed day.
>
> (1) The Federation to consist of:—
>
> (*a*) Specified Governors' Provinces in British India and specified Indian States being States which have agreed to enter the Federation and have ceded the necessary rights and powers to the Crown for the purposes of federation;
>
> (*b*) Such Governors' Provinces as may be established hereafter and such other Indian States as may hereafter accede. The limits of the Provinces to be those existing at the date of the Act, but nothing in the Act to affect the position as at the date of the Act of any territories not within the limits of a Province which are administered with or as part of any Province under the Foreign Jurisdiction Act, 1890."

You will see, Mr. Joshi, that federation depends upon consent, and it will have to be of the States which have agreed to enter the Federation and have ceded the necessary rights and powers to the Crown for the purposes of federation. Your argument is an admirable one, and no doubt on your way back to India you will take aside Sir Akbar Hydari and His Highness of Bhopal and press your arguments on them, and no doubt you will do so with

your usual skill; but that is how the matter stands with regard to that.

Sir Akbar Hydari: So far as Hyderabad is concerned, Mr. Joshi has in a great measure been speaking to the converted. Hyderabad is basing its legislation more or less on the lines of British India, and will continue to have it on those lines and on the lines which are dictated by sentiments of humanity; so that, so far as that is concerned, I think Mr. Joshi will not find very much difficulty in coming to some agreement with Hyderabad so as to safeguard the rights of Labour on purely humanitarian grounds.

Chairman: I am sure Mr. Joshi will receive that with great satisfaction.

The other point he raised is a very important one, and that is with regard to the ratification of these international Labour conventions. What I am going to say now is not my opinion at all; it is simply certain suggestions, some of which I indicated to Mr. Iyengar yesterday. I am simply going to read them out so that you may give thought to the matter. I do not want any opinion expressed now. It is a matter which has not been properly considered yet, and which cannot be properly considered yet, and therefore I am going to read these things out in order that you may have an opportunity, I will not say of agreeing with them, for I do not ask for agreement or disagreement, but so that you may consider them, because they are matters which have engaged our careful thought over here, and we are in a little difficulty about them.

This is on External Relations:—

> "There is a theoretical difficulty in fixing the limits of the subject, since many external questions have their internal aspects, and *vice versâ*. In practice, however, the difficulty will be much smaller than in theory. The reserved subject is broadly the political relations of India with other countries, including British relations with foreign countries, in so far as they are conducted by the agency of the Governor-General."

Now here comes your point:—

> "It is true that the economic and other relations of India with the outside world may affect political relations, and in so far as they may do so the Governor-General will have a special personal responsibility. In cases which have both a political and an economic or other aspect, policy will in practice possibly be decided by the Governor-General acting on his own responsibility subject to the control of His Majesty's Government, or on the advice of his Ministers, according as the political or the non-political aspect predominates, or will be the subject of agreement and compromise between the two sides of the Government. When there is no agreement as to which side is principally concerned the Governor-General's decision will be final. It

will therefore be unnecessary and undesirable to attempt by rules or instructions to define the extent of the reserved subjects or to enumerate its heads. The matter to be actually included in the portfolio of External Affairs will, of course, have to be settled later for the allocation of business, but even then it will be undesirable to define by hard and fast rules the extent to which they are or are not reserved. It seems impossible to make a satisfactory classification of political and economic, etc., questions in which both aspects are present and the one or the other aspect may preponderate. At different times a hard and fast classification, however meticulous, will almost certainly hamper administration on one side or the other."

That will appear on the note and I want you to be good enough to consider that, Mr. Joshi; it affects your class of case, if I may say so. We are getting down to grips with this subject now. No constitution will ever last, however cleverly you draw it up, unless people are agreeable to work it, and anybody—I was going to say any fool, but that is a silly thing to say—anybody can make a mess of any constitution if he wants to obstruct; and I think, therefore, the very best thing—and I submit it for your careful consideration—is this: you do not want to be hampered by too many rules in the future and you do not want to have too many regulations, but you will find that if you have any sort of general regulations, with the spirit of give-and-take, as things go on, and mutual agreement and compromise, you will be able to settle a very great number of things as they arise by mutual discussion and consent and compromise. Therefore do not at the present moment tie yourselves up with a tremendous amount of theoretical rules, which may be an awful curse to you when you come to try to settle the questions which arise day by day. You will find that as the provincial affairs and the federal affairs get into order the daily working of these things will enable you all to come to working agreements which will be far better than our laying down a thousand and one theoretical rules as to what is to happen in various contingencies which may never arise.

I have said all I have got to say. I do not want any comments, but I want you to be good enough, because you have raised two important points, to go back and consider those things.

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Defence and External Relations.

Sir Akbar Hydari: Lord Chancellor, with regard to External Relations I should like to invite attention to this sentence in the Prime Minister's declaration, by which we stand. It is at page 81:—

"The connection of the States with the Federation will remain subject to the basic principle that in regard to all matters not ceded by them to the Federation their relations

will be with the Crown acting through the agency of the Viceroy."

As to Defence, His Highness the Ruler of Bhopal has read out a statement which represents the unanimous opinion of the Indian States Delegation. Whether there should be a Minister of Defence, whether he should be an Indian or a European or either, whether he should be from the elected members of the Legislature or nominated by the Viceroy—all these are questions which we desire to leave for decision by the Crown, to which we reserve full responsibility as long as Defence is a Crown subject; and in this connection I would invite again particular attention to paragraph 5 of the Defence sub-Committee's report.

Chairman: It is at page 62, if you would kindly read it out.

Sir Akbar Hydari: "A view was expressed that an addition should be made to these resolutions to the effect that the sub-Committee recognised that no action should be taken so as to prejudice in any way the power of the Crown to fulfil military obligations arising out of Treaties with particular Indian States." It was ruled, however, and accepted by the sub-Committee that such a specific declaration was unnecessary, the Chairman giving an undertaking that neither this sub-Committee nor any other Committee could in any way abrogate treaty obligations and engagements that were in operation.

As I say, I invite particular attention also to this portion of the Defence sub-Committee's Report. So far, however, as to his being a member of the Federal Cabinet is concerned, I, for one, speaking for myself alone, would not like to introduce an extraneous element and thereby destroy the unity of the Federal Cabinet by making him a member of that Cabinet. The educative and the liaison functions, which is one of the arguments for having such a member in the Federal Cabinet, can be performed in my opinion much better by an Advisory Council drawn from several groups representing several interests, and who would be in touch with the Commander-in-Chief or the Viceroy's Military Adviser, if such is appointed.

Chairman: Thank you very much, Sir Akbar; I am very much obliged to you for your help.

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Amendment of the Third Report of the Federal Structure Committee.

Mr. Jinnah: Lord Chancellor, you have forgotten me altogether, about that paragraph 14?

Chairman: No, I have not, Mr. Jinnah. I have got here your little note that you sent me yesterday, I will read it.

Mr. Jinnah: I do not want it to be locked up in your breast; I want it to be on record.

Chairman: I will unlock it now. This is the letter which I sent to you yesterday:—

> "My dear Jinnah, Will it suit you if I add at the end of paragraph 59 the words 'Mr. Jinnah and/or the Muslim Delegation are unable to give their assent to this paragraph'?"

The mention of paragraph 59 was a mistake, of course. You quite rightly pointed out in your reply that it was paragraph 14 not paragraph 59, and you wrote:—

> "The Muslim Delegation are unable to give their assent to the paragraph as they think that no case for weightage has been made out."

Now, what I am going to do is this; I am going to add that at the end of the paragraph, but the only thing I wish to ask you is this. In order to save expense, instead of having the whole thing printed with that addition, will you allow me to say it publicly at the Plenary meeting of the Conference, and then we can have it printed with any other alterations?

Mr. Jinnah: It is as you wish.

Dr. Ambedkar: I want to say that I agree with that statement of Mr. Jinnah.

Chairman: I will put you in too.

Mr. Joshi: I also agree.

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Commercial Discrimination.

Mr. Benthall: The subject which I have the honour to begin is supposed to be a very controversial one, but I am not one of those who think that it is insoluble. I think the best service that I can do at the present juncture is to put forward the full views of our people, not as a college debate but because, if all the circumstances are fully taken into consideration, it is my belief that a greater measure of understanding can be reached than has been reached hitherto.

After all, the problem which is facing us in commercial discrimination is contained in paragraph 14 of the Minorities Report of last year, and it boils down to further discussion on the clause requiring that an appropriate convention based on reciprocity should be entered into for the purpose of regulating the commercial rights of the British mercantile community. As far as I am concerned, I am determined, if possible, to get a stage further both by public discussion and by private negotiation. What I feel is that if it is impossible for us to get a complete solution of our differences of opinion, we can at least be no worse off, as I am convinced from my conversations in private that there will be no going back on the spirit of last year's clause.

With your patience, therefore, I propose to deal with this subject rather fully, and I will deal with it quite frankly and will

keep nothing at the back of my mind. At the same time, I will try to put it in the least controversial and the most moderate way possible, and out of it I have great hopes that even at this eleventh hour we may get a good deal further.

I would ask my fellow Delegates for one moment to put themselves in our position. On the one hand, Indians are asking us not to stand out against a transfer of political power over commerce, and on the other hand a large volume of public opinion proclaims that if the power is transferred they intend to make use of it to our disadvantage. The leaders of British commercial opinion have in recent months made it quite clear on many occasions that they have no desire whatsoever to stand in the way of any legitimate aspirations of Indians or to impede India's constitutional advance on sound lines. We are just as anxious as anyone else for a successful outcome of this Conference, but it has been necessary for us, and still is necessary, to state that unless our rights are protected in the clearest and most unequivocal manner we must reserve our consent to the transfer of power, and that protection must be afforded in the Act itself; but let me add that if a solution can be found I feel quite confident that a great cloud will be cleared away between the two peoples, and it may lead to a happy solution of the whole problem.

There were two courses open to us to obtain the safeguard which we required before agreeing to the transfer of power. We could, of course, have gone to His Majesty's Government direct, and if we did so we should have gone with confidence of support in the fullest possible manner. We have not done that. The Round Table Conference was called to find the maximum possible measure of agreement on all the subjects which came before it, and in joining it we have come in that spirit, not to try and make but to solve difficulties, not to destroy but to try and build up.

In respect to this particular problem we have come to make an agreement to fill out clause 14 so that both sides may understand it more clearly.

Before going on with the details of the case, I should like to make one more point, slightly controversial. As I have indicated, we are not afraid of bringing a fair mind to this question, because we realise that if it is to reach a satisfactory issue our fellow Delegates must recognise that any settlement is fairly in the interests of India as well as of ourselves. As Sir Hubert Carr said at the last Conference: Our commercial rights are not for negotiation, but we are prepared to go as far as we can to meet Indian aspirations for the good of India, provided we are met halfway. But whilst we are prepared whole-heartedly to look at the interests of India as a whole, we are not much concerned with the interests of a few individual competitors who have shown that they seek to deprive us by legislative actions of rights which we have legitimately won by years of industry and integrity.

The problem divides itself in our minds into five sections. The first of these is the substance of the trading rights of the British

subjects in India. The second is the methods by which Indian trade can be assured of a fair deal. The third refers to trade relations between Great Britain and India. The fourth relates to the method of introducing an agreed solution into the constitution. The fifth section concerns trading agreements between India and Burma, if Burma is separated, between Burma and Great Britain, between each individual State and Great Britain, and the internal problem between the States and Provinces of India. These last additional aspects do complicate the problem, and cannot in the long run be avoided. But once the first four points have been settled I feel confident that the rest will fall more easily into solution.

The first principle laid down at the Minorities Committee at the last sitting of the Conference was set forth as follows:—

> "The principle is generally agreed that there should be no discrimination between rights of the British mercantile community, firms and companies trading in India and the rights of Indian-born subjects."

Now that principle has been agreed, and it might be argued that there is no need to dwell further upon it; but this is the only opportunity I think that we shall have of stating our case, and I think it is necessary and will be very helpful if we put forward what is in our people's minds.

Whatever may be said to the contrary and however much detractors of our historical association with India may seek out instances where British traders have not done well for India, it must be acknowledged that India has reached its present stage largely owing to British capital. Many of us look forward to the day when India may follow in the footsteps of the United States, whose industrial and financial progress was originally built up on a foundation of British capital. India to-day ranks I believe as the fifth country in the world's trade, and she can take a still higher place if British and Indians can find a way of working together. Our first claim to recognition, therefore, is based upon our past service and our established rights which are part of the national economy. We are not demanding something new but the retention of something which we already have; and no one would willingly allow themselves to be deprived of something which they have justly earned and which they value very highly. I think you will agree with me that that is a fair claim.

The Government of India's Despatch of September, 1930, in Section 190 puts the case very fairly; it says:—

> "Subject always to India's right to receive reciprocal treatment, citizens of any part of the Empire should be allowed to enter India freely, to engage freely in any trade, business, profession or calling, and when established in India to receive just treatment."

That is just our claim. If we were to base our claim solely upon our past services and rights, we should, in justice, and in spite of

what anybody can say, have an unassailable claim to the protection which we ask for under the new constitution. But although that is in reality our strongest ground for claiming the application of the principle of no discrimination, there are other grounds which are equally powerful. What we ask we concede. The Indian subject of His Majesty or of a State can come to this country and, as a British subject, the law excludes him from nothing that is lawful to a European British subject. He is free as a British subject to come and go; he can exercise the vote on obtaining the necessary qualification; he can sit in Parliament; he can be eligible for both houses. He can carry on any trade or profession; no law of this country so far as I am aware excludes him from any benefit of trade. As a British subject he is entitled to the benefits of any Act which allows State aid to industry. In one recent Commission the Overseas Trade, Credit and Insurance Act of 1920 was quoted as embodying discrimination; but that discrimination was against foreigners; and no British subject, no British Indian subject is excluded from the benefit of that Act. All we ask, therefore, is reciprocity on the lines of the second part of the clause. So long as Great Britain does not discriminate, so long we claim India has no moral right to do so, and should demand no legal right.

Now it seems to me that if these two countries are to go hand in hand together in the future, there can be no principle more natural between the two nations than the principle of equity and reciprocity.

Mahatma Gandhi spent his early life fighting for this principle, and I feel quite sure that he has not changed his view. I think I am right in saying that Mr. Sastri and Sir Tej Bahadur Sapru at successive Imperial Conferences fought for this principle.

Mr. Sastri: But did not get it.

Chairman: He only said you fought for it. There is nothing controversial in that statement.

Mr. Benthall: The line which we have taken and propose to take represents the good relations which one would naturally expect to exist between two countries under the same Crown and bound together by common interests.

The above two arguments in favour of our claim are based on right and abstract justice, but there is another argument, another aspect which carries equal weight, and that is based on reason. It is not as if this question was a new subject; the whole matter has been thrashed out in a most thorough manner by various Committees in India.

The first to discuss the question was the Indian Fiscal Commission of 1921-22, and I should like to quote you a few sentences from Chapter XV of their Report to show that the presence of foreign capital in India was not considered by them detrimental to India's interests. On page 130 of the Indian edition, Section 289, there occurs the following passage:—

> "If it were true that employment of foreign capital would merely benefit the foreign capitalist, and would not

> benefit India, no one would hesitate to condemn the use of foreign capital, but, when the matter is really examined, there can be no doubt that, though the foreign capitalist may get his profit, the main advantage from the employment of foreign capital remains with the country in which it is employed. In the case of India this is particularly clear."

Further on, at page 134—these are just samples of many similar passages—there occurs the following:—

> "If, however, legislation is enacted putting obstacles in the way of the employment of foreign capital, India's credit abroad will be injured and the British investor will also become shy. The result will be that India will not be able to obtain the money which she requires both for public and private purposes, or will only be able to obtain it at materially higher rates."

That is even more true to-day.

Two causes of the distrust of external capital, and therefore of our position in India, were raised and dealt with. The first was the allegation that the vested interests of external capital tend to be antagonistic to political progress. Whatever justification there may have been for this criticism in the past, there can be no justification to-day, nor can there be any possible argument at all under the proposed future constitution.

The second argument was that external capitalists took no trouble to train up Indians or to associate themselves with the country. The Report remarks, with regard to this, that there is a growing tendency, due to economic causes, for foreign capital to identity itself with the interests of India. I have no hesitation in saying that this process has been most marked in recent years, as anyone will admit who cares to make an impartial investigation of the recent business relations of British trade in India; and this is a process which must necessarily continue in the future. The thousands of shareholders and clients with whom we have to deal make it a prime necessity that we should associate ourselves with Indians in every possible way, and I may record my own experience that even in the height of the civil disobedience movement last year very little arose to disturb the good relations between ourselves and our friends, even in quarters where the most violent political pressure was brought to bear.

The process of Indianisation is bound to continue in the natural course of events, and will be accelerated under an Indian Government, but the attempt to hasten unduly the course of events would only react to the general detriment of India. If there is anything very clear to me, it is that the real future prosperity of India lies in joint enterprise of Europeans and Indians.

The Minority Report of the Indian Fiscal Commission, while anticipating that an Indian Government should, in any case where bounties are given, be entitled to exercise some control in the interests of India, also claimed that the right to establish any

industrial enterprise behind the tariff wall should be considered as a concession in itself, and they desired that any companies which established themselves in future behind the tariff wall should be required to comply with three conditions. Such companies should be incorporated and registered in India with rupee capital; there should be a reasonable proportion of Indian Directors on the board and reasonable facilities should be offered for the training of Indian apprentices. I would ask you particularly to remark those conditions.

As a result of the findings of this Commission a further Committee, known as the External Capital Committee, was appointed in 1924 to consider the question. The terms of reference were "to consider the question of the flow of capital into India from external sources." It was appointed for the specific purpose of clearing up the points left out by the Fiscal Commission. It issued a questionnaire dealing with the replacement of restrictions on and differentiation of external capital, and it reported towards the end of 1925:—

> "This Committee confirmed that as a general principle the inflow of external capital is not only unobjectionable in itself but is a valuable factor in assisting the economic development of a country and in increasing its wealth and employment. . . . Ordinarily countries so far from attempting to discriminate against or to penalise the external capitalist do all they can to encourage the flow of capital."

They pointed out the advantage to be gained by encouraging external capital so far as internal capital was not forthcoming. They added that:—

> "The proposition that preferential terms should be secured by Statute to the Indian investor is short-sighted and involves an economic fallacy. The interests of the Indian investor will best be served by giving him the widest freedom of choice as to the character of his investments and the most open market in which to sell them when he so desires."

Now I would quote from the Summary of Recommendations, Section III:—

> "Though in certain circumstances the control of external capital may be necessary in the interests of India general measures discriminating against it or penalising it either by way of taxation or by way of control would, so far from assisting the development of these resources or fostering the interests of the Indian investor, be definitely injurious to both, as they would impede the growth of new industries and restrict the transferability and consequently the market value of the holdings of the Indian investor."

Section IV points out the desirability of undertaking a survey of the whole field of banking, the outcome of which has been the recent Banking Inquiry.

I would particularly draw your attention to sections V and VI which I will read to you in full, because they embody principles which are very much wrapped up in the further solution of Clause 14 of last year's Minority Report:—

> " V.—As regards the control of external capital, where the external capitalist is merely entitled to a stipulated rate of interest, and only acquires rights of control when there is default, as in the case of State and Municipal loans, bonds and debentures of companies, and bank loans, we do not consider any measures of control necessary, but in the case of Government and quasi-Government loans, the rate of interest should not be the sole consideration in placing such loans and, other things being equal, preference should be granted to the Indian investor."

Conclusion VI reads as follows:—

> " Where investment carries with it the control of an undertaking, we consider it reasonable that when Government grants particular concessions to the industry of which that undertaking forms part it should exercise such control over the undertaking as will ensure that the benefits of the concession accrue primarily to the country."

The next is important:—

> " (*a*) Where the concession is general, as in the case of a protective tariff (and this would include practically every industry in India, as a revenue tariff without a corresponding excise has a protective effect) it is impracticable "—note the word " impracticable "—" to effect any discrimination. No feasible suggestions for such discrimination have been suggested to us, nor have any occurred to us during our discussions.
>
> (*b*) Where definite pecuniary assistance, such as a bounty, is granted to any particular undertaking, we consider that discrimination is feasible, and we agree with the Fiscal Commission and the Legislature that no such assistance should be granted to any company, firm or person not already engaged in that industry unless—
>
> I. Reasonable facilities are granted for the training of Indians, and
>
> II. In the case of a public company unless—
>
> (i) It has been formed and registered under the Indian Companies Act, 1913.
>
> (ii) It has a share capital the amount of which is expressed in the memorandum of association in rupees.
>
> (iii) Such proportion of the Directors as Government may prescribe consists of Indians.

(*c*) Where a concession is granted to exploit a wasting asset, such as a mineral concession, no definite rules can be prescribed. It must be a question in each case whether it is better from a point of view of the national interest that a concession should be developed by external capital or left until indigenous capital may be prepared to develop it. Such concessions should only be granted to external capitalists when it is clearly in the national interest that they should be developed."

The note of dissent by Pandit Malaviya took up the same line as the minority Report of the Fiscal Commission and held that it was desirable that in the case of every new company which may be formed hereafter in India a reasonable proportion of the directors should be Indians, and also that at least half of the share capital should be reserved to Indian subscribers for a definite period of time. If after that period Indians had not subscribed their share the company should be free to acquire the remaining capital where it could.

The practical objections to Pandit Malaviya's proposals were dealt with in Sections 21—26 of the majority Report. I will not tire you by reading them in full, but they are summed up in the word " impracticable ".

To-day the demands of Congress, as I understand it, are that 75 per cent. of the shares and 66 per cent. of the directors of any new company to be formed hereafter in India shall be Indian.

Let me make our position quite clear. There is a point beyond which we cannot go. We are prepared to align ourselves with the majority findings of this External Capital Committee specially appointed for the purpose, with one immaterial exception. The third clause of the External Capital Committee's Report lays it down that in the case of a public company " such proportion of the Directors as Government may prescribe (must) consist of Indians." We object to this instance of racial discrimination, but we are quite prepared to admit the same effect by altering this clause to that recently adopted in the Bengal State Aid to Industries Act where it was laid down recenly that in such cases Government shall approve the composition of the Board. As the future Government will be Indian, they will naturally require such proportion of Indians in the directorate as they may think fit. The amendment does away, however, with the one objection that we have.

This brings us to our second heading.

* * * * *

(The Committee adjourned at 1-10 p.m. and resumed at 2-30 p.m.)

Mr. Benthall: Lord Chancellor, I have just reached our second heading, the manner in which the Indian Government can assure individual Indian industrialists of a fair deal, especially in so-called key industries. The first question which faced us

was: what is meant by key industries. The British Safeguarding of Industries Act only recognises as key industries certain products, such as optical glass, ignition magnetos and wireless valves. These are not at present of much interest to India; but even in the case of these key industries British Indian subjects are not discriminated against in any way. It is true that in the League of Nations discussion on the treatment of foreigners certain other trades and industries were laid down as being fit subjects for discrimination; but I would point out immediately in unmistakable language that these cases apply to foreigners and do not apply to the relations of parties who are destined to be equal partners in a Commonwealth of Nations. As British subjects in India we have a right to claim treatment equal to what an Indian British subject gets in this country.

I do not think it is appreciated either in this country or in India what a large degree of control will pass to India if the constitution which we contemplate is brought into being. It is, I think, very important that both sides should realise and recognise the extent of the powers which are going to be transferred.

Let us examine the different ways in which a National Government can take care of industries of all sorts to see that they are administered in the interests of India. Nothing that we ask for will prohibit the Government of India from treating any of these industries as fit subjects for nationalisation or socialisation. Should the new Legislature desire to adopt a policy on these lines we are quite prepared to admit that the Legislature should be in this respect master in its own house; but we would ensure that existing rights—for example, those under leases or licenses—can only be abrogated or cut down on the terms that proper compensation is made to the holder.

Such a proposal merely embodies a principle recognised by all civilised communities, namely, that a man's property is not to be taken from him by the State without due compensation. Such a proposal applies to the benefit of Indians and non-Indians alike, and leaves the Indian Legislature free to develop its own policy on lines that seem to it best. There is nothing difficult in this.

A clause guaranteeing the right of property is in our opinion an essential feature of the new constitution. It is naturally with some diffidence that we put forward any suggestion before so many legal luminaries, but the sort of line which such a clause might take would be something like this:—

> "The right of private property is recognised and guaranteed, and no person shall be deprived of such property except under due process of law, provided that property of all kinds may be expropriated for public purposes, subject to the payment of just compensation to be assessed by an independent tribunal."

Chairman: Something like the French resolution of 1789.

Mr. Benthall: I am not familiar with that. My suggested clause should go on:—

> ". . . from the decision of such tribunal appeal may be taken to the Judicial Committee of the Privy Council under such regulations as may be prescribed by His Majesty in Council."

Then, again, it will be open for the Indian Legislature to assist any industry by direct financial assistance, in which case the principles of the External Committee's Report would apply. There is a vast scope for development on these lines.

Another means of assisting indigenous concerns is by the granting of subsidies for performance of specific services such as the carrying of mails by air, sea, or land. Again, financial assistance may be given by way of loans at low rates of interest for similar purposes. That has been the subject of a good deal of discussion in our private conversations.

We have, of course, no objection to a reasonable policy of this sort provided that no discrimination is exercised on racial lines or against one or two companies fulfilling the same functions. Let me give an example of what I mean. Given equal efficiency and equal terms, and other conditions being equal—I will put it like this—it is not unlikely that the Executive would give a contract for the carriage of air mails between two towns to an Indian firm in preference to a non-Indian firm, or if two companies were making steel and one of them were making a particular type of steel, which the Goverment would wish to encourage, there would be no difficulty in giving financial assistance, say, in the form of an easy loan, for that particular purpose; but if a bounty were given it should be given to that particular steel, and it should be open to either company to claim the bounty if it provided the steel. We should, however, object in the strongest possible manner if the policy of giving bounties for specific purposes were stretched to the point of unfair *de facto* discrimination.

There is, of course, a complaint that big corporations may come into the country and form monopolies. If it is found that external capital is exercising an unhealthy monopoly, there is no reason why legislation on the lines of the Sherman and Clayton Acts in America should not be introduced, or the Commercial Trust Act in New Zealand, which deals with restraint of business and prohibits the giving of rebates with a view to exclusive dealing, selling goods at unreasonably high prices, attempts to control wholly or partially the demand or supply or price of goods in New Zealand.

Similarly, on these lines, to ensure a fair deal for small Indian companies the Government would be fully empowered to exercise control over maximum and minimum rates so as to ensure that a weak company would not be squeezed out by a strong company cutting rates unfairly. There are many precedents for such legislation in most countries.

Again, if in any trade an unfair system of rebates is established, it would be within the power of the Legislature, without discrimination, to deal with such a matter if it could be proved that the system was in any way hostile to the interests of any small and well-conducted concern.

To recapitulate, the safeguards for India are first and foremost a national Government, national patriotism, government power to subsidise, government control government power to acquire for national purposes, government power to deal with monopolies, trusts and so on. On these lines we hold that a national Government should have no difficulty in ensuring its nationals an absolutely fair deal without discrimination.

The next heading deals with trade relations between Great Britain and India. When our Delegates last year discussed a convention the British commercial community had in mind that it would be possible at this Conference to come to an agreement which would regulate not only the position of the British commercial community in India but also the trade relations between the two countries.

We contemplate that if we can arrive at a commercial agreement on general principles between the two countries, not imposed but negotiated fully at this Conference, we should perhaps have established a bond between the two countries which would put the past months once and for all behind us and would enable the traders in both countries to get on with their work on a real basis of identity of interests.

In our view the conclusion of such an agreement would be as much an act of constructive statesmanship in the economic sphere as the definition of political relationship between the two countries in the political sphere. We have always interpreted the clause in the Minorities sub-Committee's Report as meaning what it says—namely, a convention based on reciprocity.

Naturally, such a document would provide for most-favoured-nation treatment between the two countries—the minimum basis possible, of course, between two countries under the same Crown—but we also contemplate that the principle of Imperial preference will be affirmed. Recent events have, I think, clearly demonstrated that the Dominions are supporters of this principle. In the papers to-day we see the Dumping Bill operating on this principle, and if India, which already gives a measure of preference to British steel and British piece-goods, is less enthusiastic than the Dominions, it is in my belief, due mainly to the fact that India feels that she is not entirely a free agent in the matter.

The sentiment has been summed up in a Minute of Dissent of the Indian Fiscal Commission which was signed by such patriots as Sir Ibrahim Rahimtulla, Mr. T. V. Seshagiri Ayyar, Mr. G. D. Birla, Mr. Jamnadas Devarkadas and Mr. Narottam Morarjee.

What these gentlemen said is this:

> " We will now summarise our conclusions in regard to Imperial preference. (1) We are in favour of the principle

of Imperial preference on the distinct condition that India should in this matter be put on the same footing of freedom as is enjoyed by the self-governing Dominions, and that the non-official members of the Legislative Assembly should be given power, by legislation or by other equally effective means, to initiate, vary or withdraw preferences as may be necessary in the interests of India in all its aspects. (2) That the condition precedent to any agreement with a British Dominion on trade matters on a basis of recirpocity should be a recognition of the right of the Indian people to a status of complete equality, and a repeal of all anti-Asiatic laws so far as they apply to the people of India."

We thoroughly endorse this principle, not only because we support Imperial preference but also because it is based on the reciprocity which we desire, and allows India a free hand to deal on a reciprocal basis with the other Dominions.

We are aware how time presses upon the Conference, and this subject is one of great importance and of some intricacy. Nevertheless, we believe that even at this eleventh hour it is not impossible that a general outline of agreement on these lines might be rached, and the legal drafting could be done later.

Chairman: With regard to that last remark, which is a very valuable one, do you suggest that there should be a sort of informal meeting to discuss these matters?

Mr. Benthall: Yes, I would make that suggestion.

Chairman: They would have to do it fairly quickly.

Mr. Benthall: Yes.

I have not heard all the speeches lately, but I understand that some of our fellow Delegates claim that commercial treaties and the employment of trade commissioners should be matters for the Government of India as opposed to the Governor-General alone. I am not fully aware of the constitutional difficulties involved, but, looking at it from the lay point of view we have no objection. We appreciate that commercial treaties and agreements would involve a number of Imperial questions, and that legislation thereon will require a measure of Imperial supervision or control, but with this exception we should be glad to support the claim of our fellow Delegates, and we see no reason why the Government of India should not have the widest discretion in the appointment of Trade Commissioners and Consuls.

I will next deal with the fourth head, the manner in which such an agreement as we may conclude, if it so happens that we do conclude one, shall be embodied in the constitution. We contemplate that, as a result of our discussions here, we shall arrive at an agreement setting out in some detail the principle of non-discrimination and also covering trade relations between the two countries. We contemplate that the result of our discussions would be set forth in the form of an agreement as a schedule to the Act. We believe that this will be a more satisfactory and a

more permanent method of dealing with that problem than a restrictive clause in the Act; and it is based on the idea of honourable co-operation.

Should any legislation of an objectionable kind be put forward directly or with intent to discriminate against minorities, we assume that the Governor-General would have exactly the same powers to deal with it in the case of British commercial rights as in the case of the rights of minorities. He would have power to return a Bill for reconsideration and disallowance and reservation such as exists in all Dominion constitutions.

We contemplate further that legislation of a discriminatory nature or legislation calculated to injure the interest of any minority will, by a clause in the Act, be compulsorily reserved for His Majesty's assent. This is following the parallel in Southern Rhodesia and other constitutions. We regard this as a very important safeguard for all minorities. The effect of this, as we understand it, would be that His Majesty's Government will examine the Bill. If it is reasonable, assent will presumably be given at once. If there is an objectionable feature, it will give time for His Majesty's Government to negotiate with the Government of India for the removal of the objectionable feature before assent is given.

Chairman: That is a reservation?

Mr. Benthall: It is a compulsory reservation; it *shall* be reserved. It will not prevent His Majesty's assent being given to a measure which was reasonably discriminating. I will only give one example, a simple one: that of a Bill dealing with, say, European Divorce.

Chairman: Would you divide reservation into the two categories of discretionary and compulsory?

Mr. Benthall: Yes. The Governor-General would have discretionary reservation for any Bills, I think, but compulsory reservation for Bills of a discriminatory nature. Should the Governor-General or the Governor concerned not reserve a Bill, and should that Bill in the opinion of a minority or an individual be discriminatory, the subject would have a right to claim before the Federal Court, with a final appeal to the Privy Council, that the Bill ought to have been reserved.

I cannot help thinking that possibly in these powers of reservation may lie the solution of some of our difficulties. Under the Merchant Shipping Act of 1894 the specific signification of His Majesty's assent is required. We think that all legislation dealing with major ports, which are so essential to shipping, should be similarly reserved. Equally, I think, immigration is a subject which has been considered a fit subject for reservation in other Dominions.

Mr. Sastri: Immigration?

Mr. Benthall: Immigration, I think.

Dr. Shafa'at Ahmad Khan: Emigration?

Mr. Benthall: Immigration. Is not that so? I am sure I shall be corrected very soon if I am wrong. I think immigration laws in the Dominions are reserved for His Majesty's pleasure.

Sir Tej Bahadur Sapru: I do not think so.

Mr. Benthall: Not necessarily all.

Mr. Iyengar: There has been no compulsory reservation.

Mr. Benthall: Not compulsory.

Sir Tej Bahadur Sapru: That exists in the constitution. The power of reservation may be exercised by the Governor in the exercise of his discretion.

Mr. Benthall: Yes, but I think immigration is one of the subjects which are set forth in the Governor-General's instructions in some of the Dominions as proper subjects to be reserved.

Mr. Iyengar: You are referring to native affairs apparently.

Sir Tej Bahadur Sapru: In the South African Constitution there is special reservation with regard to native affairs in the new constitution for the first five years.

Chairman: Are you dealing with Section 735 of the Merchant Shipping Act?

Mr. Benthall: I was, yes; it is 734 or 735; I forget which.

Chairman: It is Section 735.

Mr. Benthall: Yes. Similarly we think that it would not be unreasonable to ask that all legislation dealing with banks should be reserved.

Chairman: What about Section 736 of the Merchant Shipping Act? Perhaps you do not mind about that so much?

Mr. Benthall: What does that deal with?

Chairman: That is with regard to coastal trade.

Mr. Benthall: Yes, that permits the regulation of coastal trade by the Dominions' Governments.

Chairman: What is your view about that?

Mr. Benthall: I think India has given her assent to that in the last Imperial Conference of 1930, but I presume it would be subject to a reservation.

Chairman: Those are the two important sections—735 and 736.

Mr. Benthall: With regard to banks, we think that possibly legislation dealing with banks should be reserved. Such a course allows India to legislate freely, and it is most unlikely that His Majesty's assent would not be given to any Bill genuinely helpful to Indian interests.

With regard to *de facto* discrimination against minorities, we contemplate that the rights of minorities should be most clearly set out in the Act, and that the Governor-General should see that the spirit and letter of their rights are observed, and that whenever in his opinion those rights are infringed he should have power effectively to intervene.

In the case of a breach of the trade agreement, we contemplate that the procedure will be for the Government of India, where Indian rights are concerned, and the British Government, where British rights are concerned, in the last resort to claim that the matter may be laid before the Judicial Committee of the Privy Council or such other tribunal as may be agreed upon. Both countries would then be bound by this decision.

I should like to make a few observations on the parallel agreements. First, there is the convention referred to in para. 6 of the Burma sub-Committee's Report, where the hope is expressed that it may be found possible to conclude a favourable trade convention between India and Burma. It is important that the separation, if it takes place, should cause the minimum disturbance to the close trade connections which exist between the two countries. I presume that if Burma is separated an agreement will be drawn up on much the same lines as we have contemplated for the trade arrangements between Great Britain and India, and that a similar one will be required in some form between Great Britain and Burma.

With regard to Indian and British capital in Burma, the same principles governing external capital will apply in Burma as in India.

Presumably the relations between India and Burma will be settled on a basis of reciprocity, but with no representative of Burma present here, that subject cannot be discussed at the present moment. It will, however, have to come under discussion before the constitutions are framed.

With regard to the relations of Great Britain and each individual Indian State, the agreement to which I have referred will be a most admirable vehicle for recording the relationships of each State with Great Britain. We think the proper procedure will be for each State as it is admitted to the membership of the Federation to become a party to the schedule of the Act setting forth this agreement, subject to such modifications as may be specified in the Order in Council providing for the admission of the State.

Lastly, there is the relation between the States and British India. Here we contemplate the widest freedom of trade. At present States' subjects are not debarred from the widest freedom of trade in British India and they are also accorded political rights under regulations issued by Provincial Governments, but it is necessary that their rights should be regularised in the new constitution. That is a mere suggestion. I leave the matter to others more capable of dealing with it.

Lord Chancellor, the subject as set forth in that clause in the Minorities sub-Committee's Report seems a simple one, but the further it is examined the more complex it becomes. I certainly hope that my remarks have not served only to complicate the problem. In our opinion they indicate the only satisfactory way out.

In conclusion, I would return to my opening remarks. Clause 14 of the Minorities sub-Committee's Report revealed in reality a

very large measure of agreement, but it left the details to a reciprocal convention to be worked out. Speeches by members of the Conference in India did not disclose a very wide difference of views, and talks with responsible members of the Conference here have disclosed again that the breach is not very wide; in fact, myself I think that we have narrowed it down very considerably. At one time quite recently I even thought that the breach had been closed.

I have not much faith in big Committees for dealing with a proposal such as the convention, where detailed discussion is necessary, and in my belief the best way by which we can arrive at a definite conclusion on this matter is by a continuance of informal discussions possibly of a sligthly wider nature than we have been carrying on hitherto, and I would repeat again that even if we cannot reach complete agreement on all the points, I am quite satisfied that we can carry the measure of agreement reached a great deal further than it was carried at the last Conference.

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Mr. Jayakar: Lord Chancellor, I have listened to Mr. Benthall's speech with great attention and a great deal of appreciation. There are many parts of that speech with which I cordially agree. I do not propose to follow him into the large field of topics with which he dealt in the course of his speech, because I have no time to do so. I shall confine myself, with your permission, to an explanation of the formula which was arrived at as a kind of compromise last year about the end of our Session.

Chairman: That is page 49 of the book.

Mr. Jayakar: Yes, My Lord. Thank you. Speaking generally, there is perhaps scarcely any other item of our work in England which was subjected to so much criticism in India as this formula was. I would take the liberty of saying that much of that criticism arose in ignorance of the genesis of that formula, the several stages through which that formula went before it was finally accepted, and if I may say so, the varying points of view which that formula sought to reconcile; and my endeavour now will be to explain in a few words how that formula came to be adopted, and the antecedents thereof. I will say at once that it was a very wise compromise between two opposing views, not to mention the fact that it had the assent both of the commercial men, Indian and European, who were present here at this time last year, and also the assent of legal men like Lord Reading and Sir Tej Bahadur Sapru and many others. Such a formula, *primâ facie*, must command considerable attention, because it is the outcome of a great deal of deliberation carried on by responsible men, and I propose to examine the several parts of that formula because I hold the view that it goes as far as it was possible to go, having regard to the circumstances which were before us at this time last year.

I may at once assure Mr. Benthall that, speaking generally, public sentiment in India does not desire to make any racial dis-

crimination as a general principle between one community and another.

I can assure Mr. Benthall, so far as one man's voice can do so, that India in the past has suffered so much from racial discrimination, both inside her borders and outside, that when she is a free country she will be very careful not to have any racial discrimination at all, as far as she can do without it.

This Committee is aware, Sir, of the inroads made upon India's self-respect time after time on the ground of race and nationality in many parts of the Empire and in many other parts of the world, and this has been a great lesson to India, so that when she is free and left to herself she will be very anxious not to have any racial discrimination as such, as a general principle.

If I may remind Mr. Benthall of what a Committee, consisting of very patriotic men, called the Nehru Committee, recommended, I would point out that that Committee was composed of men who were stalwarts in national life and were drawn from practically all communities, majority and minority. I would like to remind him of what they said about European rights and rights of discrimination, and I would invite Mr. Benthall's attention to page 11 of the Report of the Nehru Committee, where this question is considered and to which I attach the greatest importance. This Report bears the signatures of some of the most important men in India.

Chairman: You mean the sentence beginning "We are next confronted"?

Mr. Jayakar: Yes, My Lord. I will just read the material part of the paragraph:—

> "As regards European commerce, we cannot see why men who have put great sums of money into India should at all be nervous. It is inconceivable that there can be any discriminating legislation against any community doing business lawfully in India."

Chairman: Yes, and perhaps you will allow me to say that when I read this Report I underlined that three times. I have it in front of me now.

Mr. Jayakar: The Report goes on:—

> "European commerce, like Indian commerce, has had to bear in the past and will have to bear in the future, the vicissitudes inseparable from commercial undertakings on a large scale, and no government in the West or anywhere else has been able effectively to provide a permanent and stable solution for conflicts between Capital and Labour."

They go to the length of saying, in the next sentence:—

> "If, however, there are any special interests of European commerce which require special treatment in future, it is only fair that in regard to the protection of those interests

> Europeans should formulate their proposals, and we have no doubt that they will receive proper consideration from those who are anxious for a peaceful solution of the political problem."

This opinion, Sir, having regard to the men who put their signatures in approval of it, is of the utmost importance; and, if I may say so, it represents the bulk of the educated opinion in India. Speaking generally it is adverse to racial discrimination as such.

The Nehru Committee went further and adopted an expedient which I think it will be our duty in course of time to explore, because I think it furnishes the lines along which a solution can best be sought, namely, a clause with regard to the fundamental rights of citizens and a definition clause indicating what we mean by a citizen.

Perhaps I may invite Mr. Benthall's attention once more to this Report at page 102.

Chairman: Might we just get it on the notes; the definition of "citizen" is, I think, paragraph 3.

Mr. Jayakar: I am coming to that. It is page 102. Dealing with fundamentals rights, this is how the Nehru Committee state this point:—

> "Clause 6: All citizens are equal before the law and possess equal civic rights."

That includes trading rights. Then, coming to the definition of a citizen in clause 3, at page 101, the original definition was this:—

> "The word 'citizen' wherever it occurs in this constitution means every person"—

I leave out the first clause, My Lord, that is not material here—

> "(*b*) who is naturalised in the Commonwealth under the law in force for the time being."

Then there is an explanation:—

> "No person who is a citizen of a foreign country can be a citizen of the Commonwealth unless he renounces the citizenship of such foreign country in the manner prescribed by law."

After this definition was adopted the European community in India protested against it and they stated that that definition was not acceptable to them, with the result that the Nehru Committee met once more in Lucknow, after a few months, and Your Lordship will find they came to adopt an amended definition of citizenship, calculated to meet most of the points which Mr. Benthall raised in the course of his speech. You will find that definition stated at page 27 of the Supplementary Report of the All Parties Conference, 1928, and this is how they defined a citizen. They alter the definition and they say:—

> "who being a subject of the Crown carries on business or resides in the territories of the Commonwealth."

Now, my submission is that this is a very wide definition and practically includes everyone, European and non-European who is a subject of the Crown and carries on business of resides in the territory of the Commonwealth.

Chairman: Would you just help me with regard to that? Is that summed up by saying that there shall be equal rights and equal opportunities to all subjects of the Crown lawfully resident in India?

Mr. Jayakar: Yes, that seems to be the meaning. Any British subject who either carries on business or resides in the territory. I believe the Nehru Committee went as far as it was possible to go, because they practically admitted to citizenship every British subject who was lawfully resident in the Indian Commonwealth or carrying on business in the territory. Some may say they went too far.

Chairman: Forgive my asking you a question, because you are always so very helpful. I simply want to clear my mind. Does that include a company?

Mr. Jayakar: I am just coming to that, My Lord. A person would include a group or company. We will, of course, have to make it clear by some means, *e.g.*, by altering the definition of citizenship so as to include a company registered in the Commonwealth of India, or carrying on business in India, having its registered office in the United Kingdom, or some such suitable definition will have to be adopted so as to complete the definition of a citizen.

Chairman: This is not a legal quibble; do you include corporation as distinguished from company?

Mr. Jayakar: I was just dealing with firms and companies.

Chairman: You began with individuals. Then we got on to companies and firms. It is rather technical. I suppose you would not have any objection to a corporation?

Mr. Jayakar: No. As a matter of fact in India there are very few bodies belonging to the class technically called corporations.

Chairman: I was thinking of English corporations.

Mr. Jayakar: I would have no objection at all. They would stand on the same principle as a firm and a company. I would ask whether wisdom would not require that we should get through this difficulty by adopting some such definition of citizenship which would give equal rights of trading to all those who carried on lawfully a business in India or who resided there lawfully.

Chairman: I am sorry to be so troublesome, but would that give all British subjects freedom of entry into India?

Mr. Jayakar: Well, that is not so clear, My Lord.

Chairman: I beg your pardon for interrupting.

Mr. Jayakar: This is what it says: they have all equal civic rights after they come in. Whether it would give them equal rights of ingress or entry into India is not clear from that definition.

Chairman: No; but I was asking your opinion, Mr. Jayakar.

Mr. Jayakar: Well, I would do it on the principle of reciprocity.

Chairman: Yes, I thought you would say that.

Mr. Jayakar: I would deal with the country from which the immigrant wanted to come to India and would find out how Indian nationals were treated in that country.

Chairman: I wanted to remind you of that.

Mr. Joshi: Would Mr. Jayakar give civic rights to all citizens of the Commonwealth without any consideration of the fact that in some parts of the Commonwealth Indians are not given civic rights?

Mr. Jayakar: I was using the word "Commonwealth" as meaning the Commonwealth of India, as the Nehru Report does. I am speaking of equality on the basis of reciprocity.

The original paragraph 14 was as follows:—

> "It was urged that a commercial treaty should be concluded between Great Britain and India,"

and so on. That was the original paragraph, but when it came for discussion before the Plenary Session three or four points were made, and I wish to draw the attention of Mr. Benthall to those points, and to ask whether he would be prepared to concede them to the future Government of India.

Speaking generally, the principle of no racial discrimination is agreed to, but we all feel that there are special cases either of industries or of other public activities which may require special adjustment and special treatment, and all that we are anxious to ensure is that India should not barter away her rights to deal with those specific cases as they occur, according to special circumstances.

One such case was pointed out by Mr. Mody, who happened to be present here last year. I may mention that Mr. Mody is a man who occupies a place of great importance in Bombay; he is the Chairman of the Millowners' Association. He put forward one point which requires very careful consideration, and that you will find in his speech at page 321 of the Report of the Plenary Session. Mr. Mody, in my opinion, represented Indian national sentiment in taking that point. This is what he said:—

> "While the principle of equality of treatment must be definitely conceded, it must be subject to the paramount consideration that Indian interests should be first. For instance, there may be certain key industries in which it would be necessary to lay down certain qualifications. The principle has been accepted by the Government of India themselves two or three years ago. The question came up of the conditions which should be imposed on companies which came into existence in future and which desired to operate an air mail service, and I think with the full concurrence of the Member

representing the Government of India, it was laid down that so far as companies operating air mail services were concerned, it was necessary that a certain proportion of directors and a certain proportion of shareholders should be Indians.

Now, so long as it is understood and so long as it is realised that in certain industries and national services it will be necessary to depart from the principle of strict equality of treatment, I have nothing to say."

Therefore India is anxious that although it accords its consent to the principle of no discrimination on racial grounds, it wants liberty to make special adjustments as circumstances arise with reference to certain industries which either are or may become in course of time of such national importance that special treatment will be necessary for those cases.

Mr. Sastri, whose sense of moderation and friendliness for England are above all doubt, at page 327 also expressed the view which I may say represents Indian national sentiment very clearly. Mr. Sastri said:—

"It is the right of every people to protect national industries and national enterprises from being killed or weakened by undue competition from non-nationals. The right must be secured in any constitution."

This is an important consideration which was urged by Mr. Sastri. Curiously enough, when the whole discussion was nearly coming to an end, and after Lord Reading had expressed his opinion on the point, your Prime Minister, who was then presiding, at page 334 also approved of this principle, as Your Lordship will find, in a short paragraph. This is what the Prime Minister said:—

"If there is national policy with regard to, say, key industries, supposing India wishes to manufacture optical glass which has been declared as a key industry in some countries for one reason or another, then India would be entitled to pass the same sort of economic legislation, as, say, this country would be entitled to pass."

Therefore in asking for this right we are not asking for anything which is preposterous. We say that while recognising the principle of no commercial discrimination on racial grounds we are anxious to reserve for our future Government of India the freedom to make special adjustments in special cases of industries which become important or are all-important at the present moment and may be described as key industries.

Curiously enough, My Lord, this doctrine received support from the most unexpected quarter—namely, in the Despatch of the Government of India, paragraph 190. This is what the Government of India say at the bottom of paragraph 190:—

"There are enterprises which Indians regard as national, and which at present are mainly or wholly in British hands.

> It would be idle to expect that they would be content for an indefinite period to remain without their appropriate share in the conduct of these enterprises, and if the methods at first proposed in order to satisfy Indian hopes must be ruled out because they involve injustice, or are inconsistent with the position which Great Britain holds in India, Indians may fairly ask that the British business community should co-operate in finding other methods to bring about the desired result."

Therefore this is the first principle that we want to reserve for the future Government of India—the freedom to make special adjustments in the case of special industries which have assumed great national importance having regard either to the nature of the industry or to the nature of the times through which they may be passing, and we are very anxious that this right to make special adjustments should not be bartered away.

Another point which was brought out in another speech by an equally prominent member of the commercial community, Sir Phiroze Sethna, is also worthy of consideration, and I should like to invite Mr. Benthall's attention to it. That, Your Lordship will find at page 329 of the Plenary Session's Report. Sir Phiroze Sethna there again was expressing the united public sentiment in India on this point. About ten lines from the beginning of the page he says this:—

> "What I want to point out is that that is a vested interest which was created by discrimination in favour of Europeans against Indians in the past. If that is admitted, then is it not open to the Government of India to-day to adopt measures whereby nationals may take a larger part in the basic industries and businesses of the country?"

And so it goes on.

In other words, sentiment in India is very strong on this point; although agreeing generally to the principle of no racial discrimination, if large industries which have assumed national importance are vested in the hands of a particular group or a particular community, owing to whatever cause, the Indian Government of the future must have the power of making adjustments, so that the people of the country come to acquire a larger share in the working of that industry. I am sure Mr. Benthall will agree with me that that is a very legitimate claim.

Chairman: Allow me to ask a question on that. Suppose there were very large British interests in an industry which you quite rightly thought was a key industry or national industry, would you be wishful to expropriate the existing British interests?

Mr. Jayakar: Expropriate, My Lord? I do not know whether it amounts to expropriation.

Chairman: I was only asking you.

Mr. Jayakar: If it took the form of expropriation, compensation may have to be paid; but, for instance, if an industry was entirely in the hands of a particular community which had a monopoly, it would not be wrong to help the starting of the same industry in other hands. What I am referring to is that certain industries of great national importance have come to be monopolies in the hands of certain individuals or communities. The future Government of India ought to have the right of offering to the people of the country a larger share in the working of those industries.

Chairman: Provided also that fair compensation be paid.

Mr. Jayakar: Only if it amounts to expropriation. If it means taking the industry out of their hands and depriving them of that industry it must mean compensation; but if it means starting or allowing the starting of a rival industry it is a different matter.

Chairman: What about subsidised competition?

Mr. Jayakar: I am coming to that point.

Chairman: I am sorry; I only want to get to grips with it.

Mr. Benthall: May I say to Mr. Jayakar that we are as anxious as anybody that Indians should have a fair deal. No one wishes to deny to any Indian industrialist or financier a fair deal. All we ask is that we should not be legislated out of positions which we have fairly won. We should welcome any measures calculated to give fair trading conditions to all alike, but I would add that if any person or any party is afraid of a fair deal and an equal chance, and wants something more, it strikes me the admission must surely be due to consciousness of shortcomings on his or their behalf. The whole of the second part of my speech was directed to show that it was possible that the very large powers in the hands of the Government of India meant that the Indian Government would be able to ensure a fair deal without discrimination. We base our claim on what I said, on the principle of reciprocity and on the fact that we are British subjects.

Mr. Jayakar: On paper it may seem to be very easy, but in the working of it out I have known two cases where the cry of racial discrimination went up although there was no discrimination at all. All that was intended was to see that the monopoly which rested with a company or group of people was shared with others. I say that such cases are not of racial discrimination, but I wish to make these points so that Mr. Benthall may meet them. If you are going to form a committee, as Mr. Benthall suggests, I think I should put these points before you so that you can meet them. I am trying to place before you the Indian national sentiment in the matter, and I have given you four or five points on which Indian opinion will have to be satisfied if a settlement is to be arrived at.

Then I think Mr. Benthall conceded the next right which was adverted to in the course of the speeches. That was that the future Government of India must have the power to regulate unfair com-

petition. Mr. Benthall may correct me if I am wrong, but, as I understood his speech, he conceded that right, the right to regulate unfair competition, unfair rates, unfair rebates. That is a very valuable right which we do not wish to give up. I have known cases, as Mr. Benthall has himself, of a powerful organisation coming plumb into the midst of an infant industry and wiping it out by superior competition. We wish to retain in the hands of the future Government of India the power to cut at the root of this unfair competition by making rules and regulations which will prevent that. Speaking of one company, without mentioning names, it was carrying on a competition with an Indian shipping company. It used actually to offer perquisites to those people who purchased its tickets. Methods which are adopted in order to meet that kind of unfair competition may look like racial discrimination, but they are not really racial discrimination. In practice many of these things are called racial discrimination in India. Therefore I want to make it clear as far as my individual opinion is concerned, that I think it would be wrong to take away this right to regulate such competition by legislation when we find that the competition carried on against our infant industries is unfair. For instance, supposing we were starting a munitions factory in India, and a big British company, taking advantage of the equality of privileges, came and planted a big factory in India. We must have a power of preventing unfair competition because we regard munitions as a key industry; and therefore we must have the right of so regulating the competition that our infant industry may not be killed. I would do the same with the Japanese or with the Russians if they came. It is not really a question of British and Indians: it is a question of protecting our infant industries which are in danger of being killed by the superior competition of other countries.

Mr. Benthall: I have no objection to discrimination against foreigners.

Mr. Jayakar: Then Mr. Benthall conceded the next right which I had in view, namely, the right which was recommended in the Report which he read as to the external loans, namely, the right of the future Government of India to lay down conditions as regards the capital and—more important than that—the composition of the directorates, and the admission of Indians for training in the company. If a company wants a subsidy from the future Government of India, the future Government of India should have the power to regulate these things, so that its subsidy may be given on those particular terms.

Mr. Joshi: May I ask Mr. Jayakar whether he has in view a condition about Labour, because in some countries that is so?

Mr. Jayakar: I would certainly include that. If I were in charge of the matter I would certainly include care and protection of Labour.

Mr. Joshi: No, it is not caring for Labour, but the employment of foreign Labour in preference to Indian Labour.

Mr. Jayakar: I do not want to commit myself to any opinion on a controversial matter like that. I will certainly examine the question. If Mr. Joshi means laying down conditions as to the proper treatment of Labour, maternity benefit and so on, I am certainly in favour of it.

Mr. Joshi: In some countries they do not allow foreign companies to be established unless the company agrees that not more than a certain proportion of the employees shall be foreigners.

Mr. Jayakar: That comes under my doctrine of reciprocity. Speaking generally, I am prepared to give foreign nationals the same rights as their countries give us. I think that formula ought to cover all these cases. Now what happened last year, My Lord, was this: when all these cases were pointed out at the meeting, it was thought better not to go into those details, but to have a formula which stood midway between two extreme positions; and then the formula was evolved that the working out of these exceptional cases should be left to a future convention. We only pledged ourselves to two characteristics of the convention. The first was that the convention was to work on the basis of reciprocity, and the second was that it was to be appropriate to all the circumstances of the case. We thought that would be the best formula to adopt, because otherwise we would go into details and there might be controversies provoked. Therefore the formula which was evolved was this, that all these would be the subject matter of a convention to be created in future when India was free and under her own Government. As Your Lordship knows, a convention can properly grow up only between two co-ordinate persons or co-ordinate bodies of persons; it cannot grow up with any justice or fairness between a Government and its subordinate branches.

Therefore we thought that the working out of these exceptional cases requiring protection had better be left to the future, when India was free, when India had a Commerce Minister of her own and he had gathered experience, he had the power, he had the legislative machinery behind his back, he had the public sentiment behind his back, and we thought that an appropriate convention could be much better worked out when that stage was reached rather than to-day; and I would request Mr. Benthall to reconsider whether, after all, having regard to the questions before us and the time at our disposal, and the necessity of arriving at some common agreement, he would not be content with a formula of this character which leaves the details to the future Government of India.

I am sure there will be a Commerce Member in course of time, and that Commerce Member would be backed by public opinion, he would have gathered his experience, which we do not possess at the present moment, he would have his legislative House behind him, he would be a man drawn from commerce, and we thought, and I submit it is the proper view, that it is better to leave the working out of these delicate adjustments, as I call them, these exceptional cases where India wishes to retain the right of protection, to be

worked out in future by means of a convention, binding ourselves, as we do, to two requisites—namely, that that convention shall proceed on the doctrine of reciprocity, and secondly that the convention shall be, taking all things together, appropriate—appropriate to the circumstances, appropriate to the principles and appropriate to the conditions then existing. Therefore the word " appropriate " was put there, and I remember, My Lord (not to disclose any secret), that the word " appropriate " was specially introduced at the instance of one or two prominent lawyers who were consulted, and they said that the word " appropriate " protected all those difficulties which we were assured would have arisen if we had gone into all these delicate adjustments last year, or, if I may say so, which will surely arise if we go into these delicate adjustments to-day. I would venture to ask Mr. Benthall whether he would not be satisfied with a formula like this. We agree to the principle that there is to be no racial discrimination. But how it is to be worked out in those cases of exceptional character to some of which I have referred —I have mentioned four or five, and many more can be imagined if we apply our minds to this question—is another matter, and I would ask whether it is not advisable to leave this question to be determined as India gathers experience and has the freedom to adjust her rights.

I will at once point out that if we have such a formula, and we further have a fundamental clause which gives to all the " citizens " the same civic rights, and have a somewhat wide definition of the word " citizen " of the nature contemplated by the Nehru Committee's Report, that will meet the point. I know that in India it is common practice to refer to the Nehru Committee's Report as the *ne plus ultra* of political thought, and I am pointing out that even the Nehru Committee's Report went the length of saying that every British subject is a citizen who lawfully resides or trades in British India. Nothing better could be devised, and if we had this formula, which was a compromise last year between two contending views, and which I think is very sound, and also if we had a definition of citizenship coupled with the fundamental rights of citizens, including trading rights, it would meet Mr. Benthall's view.

Before I conclude, My Lord, I wish to make one or two points clear. Mr. Benthall spoke of a treaty between England and India, a commercial treaty.

Mr. Benthall: A commercial agreement.

Mr. Jayakar: A commercial agreement, yes. It is on the same footing as a Commercial Treaty. Well, with great respect may I say that I do not see how that question comes to have anything to do with the question of discrimination against a commercial minority.

Mr. Benthall: I was trying to deal not only with the position of the British in India but also with the trade of the two countries, because I shall not be satisfied myself until we have safely covered

those two-fold relations to the satisfaction of both countries, because not until then do I think we shall have laid a permanent basis.

Mr. Jayakar: I quite follow that, but what we are trying now to consider and to meet is the fear of the British commercial community, as a minority, of being squeezed out or unjustly treated. That is the point we are now considering. The question of an ultimate commercial agreement between England and India is not germane to this question, and I submit that that question must wait until India is free. One difficulty I feel is that if we entered into a trade agreement and it was not ratified by the Legislature of the future, I do not know quite what would happen. We must therefore wait for a trade agreement between England on the one side and India on the other until the time comes when they are put into a co-ordinate position to enter into an agreement with one another and until they are equal from the point of view of dealing with one another. We want to meet as fairly as we can the rights of the British commercial community, but I do not wish that question to be confused with the question of a trade agreement between England and India. For that we must wait until India has her own government.

Speaking for myself, I think personally I would agree that when India is free there should be a trade agreement between England and India on the basis of the most favoured nation.

Chairman: That is right, the most favoured nation clause.

Mr. Jayakar: But I should be dealing with that in a different capacity and I do submit that the considerations which apply to the question of the European minority are entirely different from the considerations which apply to a trade agreement between England and India.

There are one or two other points with which I shall conclude. I think this formula should apply to those who are residents of the United Kingdom; I do not want it to apply to the whole of the British Empire.

Chairman: Not to British subjects but only to those from the United Kingdom?

Mr. Jayakar: Yes, because I am one of those who think that the future Government of India ought to have freedom to deal with every member of the British Commonwealth on its own terms, and I do not want that freedom to be interfered with in any way by anything we do here. We are quite willing that residents of the United Kingdom should be covered by this formula, but it should not be extended to any other country outside the United Kingdom. If New Zealand wants to trade with India under the future Government of India, it must be on a basis which is peculiar to New Zealand and India. We shall then examine what is the way in which New Zealand treats Indian nationals. We shall see how it treats our people. We wish to retain freedom to treat with every individual or every country in future that wants to seek the privilege of equality

of rights, and I submit, therefore, that this formula should not go beyond the United Kingdom.

I also submit that it should apply to those companies and firms which are registered in the United Kingdom and have an establishment in India for the conduct of their business. There are a number of companies which have no establishment in India for the conduct of their business, and which merely keep a stool in an office for the sake of their agent. I am very doubtful whether it would be an advantage to extend the same concession to companies of this character.

The last point which I propose to make is this, that if Mr. Benthall desires and thinks it will be an advantage to go beyond this formula now, and to seek to find out some way in which the several points he has in view, some of which I have referred to, should be dealt with, I ask him to consider whether really he will not be satisfied with this formula, and with the further assurance that we may agree to a definition of a citizen and of fundamental rights. I agree with Mr. Benthall that it may be mentioned as a fundamental right that there shall be no racial discrimination. He has also said that the Viceroy will have certain powers, as is the case in every Dominion. We shall also have the Federal Court, and, as our Report shows, every citizen will have the right to take a case right up to the Federal Court and have it decided whether particular legislation offends against the principle of no discrimination. I ask him, therefore, whether he does not consider it wise, having regard to all these things that are now provided—the Federal Court, the power of the Viceroy, the signification of His Majesty's pleasure—to be satisfied with this formula.

Sir Tej Bahadur Sapru: There is also the power of disallowance.

Mr. Jayakar: Yes, there is also the power of disallowance. I ask him whether with all these things he does not think it would be advisable to remain content with this formula, which had the approval last year of everybody except one, and then to wait until India is free and see that a proper convention is created. If I may venture to offer him advice, personally I think it would be better to insist on this clause, with the definition of citizenship and fundamental rights, and be content with the power to take this to the Federal Court and to rely on the other powers which have now been agreed on in the hands of the Viceroy or His Majesty. I would therefore request him not to make the matter one of detailed controversy, because I fear the agreement wisely arrived at on the last occasion may be lost, and we may get into a number of differences, we must not forget that there is school of thought in India that wants perfect freedom to discriminate between one community and another. I expect he is aware of that as much as I am. It is therefore advisable to be content with this clause and to rely on the other rights to which I have referred.

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Mr. Benthall: I would just say, in reply to Mr. Jayakar, that our protection must be in the Act and must be of such a nature as to afford us proper protection.

Sir Tej Bahadur Sapru: There is no dispute with regard to that.

Mr. Benthall: I think this clause is too vaguely drafted to provide that.

Mr. Jayakar: Sometimes it is wisdom to leave things vague.

Mr. Benthall: I doubt if it would be in this case.

Sir Tej Bahadur Sapru: As one who had something to do with the drafting of this clause I admit it is vague, and that it requires careful revision.

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H.H. The Nawab of Bhopal: I should like to say something with reference to one of Mr. Benthall's remarks. I understand, My Lord, that Mr. Benthall expressed the hope that the principle of equal rights for Europeans would be extended to apply to the Indian States also.

I have no hesitation in saying that the States will gladly be prepared to extend to Europeans equal rights with their own subjects, so long as the Europeans do not expect any discrimination in their favour in the matter of jurisdiction and would submit themselves to the jurisdiction of the States. I want it to be appreciated that the States are always willing to offer equal opportunities to everybody, so long as they do not expect as a matter of right preferential treatment or claim special privileges.

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Sir Purshotamdas Thakurdas: Sir, I feel that the subject with which my friend Mr. Benthall has dealt at such length is not one which he has found very pleasant to dwell upon, and I can assure him that I am in common company with him when I speak on the subject. Mr. Benthall began by saying that he thought it was only right that he should be frank in dealing with this subject; and I am sure he would expect me also to be equally frank and outspoken in expressing the views which I know are shared very largely by Indians all over my country. It is a pity that we are, to-day, as far as the discussion on this subject is concerned, speaking in an atmosphere surcharged with suspicion and distrust—if you like it, on both sides, but certainly from the British here towards the aspirations of India. If I may summarise, in one word, the net result of what Mr. Benthall has suggested, I do not think I would be exaggerating if I say that he does not want no racial discrimination in India against the Britisher, but he would rather have—I do not know whether he insists on it or not—no discrimination regarding anything in which a Britisher is interested in India, irrespective of the merits of the subject, about which there may be some sort of restriction, and irrespective of whether there are Indians in that industry or in that particular branch of activity. The result of

what Mr. Benthall required struck me at any rate as indicating: "You shall not touch anything in which any Britisher is interested, and we want provision for it from now." I wish to submit that that is a tall order, and, if I may say so, it is a demand which does not appear to me to be justified.

Mr. Benthall appealed to us to put ourselves in the position of the Britisher who has an interest in India. I fully appreciate it and I can assure him that the just apprehensions of the Britisher are apprehensions which I do not underestimate and which I am quite prepared to value at their correct worth. But at the same time I would like him, when he is thinking over this subject further this afternoon, and before to-morrow morning, to put himself in the position of the Indian who is to-day seeking reform and advance constitutionally, and find out for himself whether the restrictions which he has indicated do not practically amount to shackles on the development of India commercially and industrially—shackles which have no parallel in any other country or in any other British Dominion. If Mr. Benthall will only promise that he will do it, I will assure him, not only on my behalf but on behalf of every one of my colleagues here with whom I have had talks about this, that we all wish to enter into the spirit of the Britisher who seeks protection in this matter from any aggression in the future.

One instance which my friend stated was this: He said that India has been built up economically and industrially with British capital. He then pointed out his ideal that India may in the future draw capital from London in the same manner as the United States drew capital from Britain in the early years of her development. I am sure it would not be difficult for Mr. Benthall to follow me when I say that there is hardly a parallel between the two. India has borrowed from Great Britain exclusively till now, but that capital has brought on all sorts of handicaps on India—handicaps of the most serious character, and handicaps from which the United States were completely free. Let me give only one instance which cannot be challenged and which will be appreciated by everybody. I name the company-managed railways of India.

The capital for these—and these railways have done enormous good to the country, and developed it; that is not at all doubted—was lent by London. The head offices of those companies were located here. The railways were managed from a distance of six thousand miles, and what handicaps did that bring us! In any ordinary country, behind the system of railways which developed from 1846 till 1900 and up till to-day, there would have been developed all those various subsidiary industries necessary in order that all component parts of the railways could be built in India. Was anything like that done in India? As long as the control was here with the companies they insisted upon sending out the materials from here, even at the risk of starving the one steel company which is looked upon in India as a national institution, and the greatest of pressure was required to be brought to bear by His Excellency

the Viceroy and the Commerce Member in India from time to time in order to get the company-managed railways on to the policy of purchasing their stores in India.

I can multiply such instances, but it is hardly necessary to do so. The facts which I am putting before you, My Lord, are facts which are undisputed and unchallengable, and I mention them only to point out that the parallel which Mr. Benthall draws is no parallel at all, and the average man in the street in India feels that the capital which the City of London has lent to India has been paid over several times not only in a return by way of interest, but in what strikes him as being more ruinous than a high rate of interest, *viz.*, heavy artificial handicaps put on the economic development of the country generally and on our industries particularly. I therefore feel that India would welcome capital on such terms only as would mean no political shackles; in other words, India does not want any capital which will need the safeguards which we are now discussing, the safeguards which form an item which is looming so large before this Committee.

Mr. Benthall further showed great apprehension about racial discrimination which may be practised by the future Government of India. I am sure Mr. Benthall will not misunderstand me when I say that he is suffering under the reaction of what has been done till now by the present constitution and our predecessors, the racial discrimination which has been exercised by the Government of India ever since India was taken over from the East India Company practically up to to-day. Instance the Services, Sir. And as several of the members here who have had occasion ever to read the Indian Legislature Reports know two of the most popular subjects for debate on the railway estimates in the Legislative Assembly are the third-class passengers' grievances, including reservation for Europeans only *qua* Europeans, and the great grievance of the Indian public that the Indian had no look-in on the higher Services of the railways of India for years and years. I submit that if we, or any of the extremists among us, any of the less thinking among us, have mentioned, whether consciously or unconsciously, whether meaning it or merely as a phrase, whether out of annoyance or seriously as a threat, racial discrimination in the future, they have learnt it from what the Government of India has been practising in India all these years. It may take some time to divert the attention of the Indian people from it; but we are all unanimous that we want to exercise no discrimination *qua* racial discrimination, no discrimination against a person or a company because it is a European or a non-Indian company; but surely that does not mean that we shall agree to shut out for ever the power of discriminating both against a non-national and against a national on other grounds more reasonable and more justifiable.

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(The Committee adjourned at 4·5 p.m.)

PROCEEDINGS OF THE FORTY-NINTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 19TH NOVEMBER, 1931, AT 11·0 A.M.

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Commercial Discrimination—continued.

Sir Purshotamdas Thakurdas: Lord Chancellor, I do not propose to dwell at any further length on the past to which I referred yesterday; I desire now to draw the attention of the Committee to the presentation of the case before us as it has been done in the Government of India Despatch; and, if I may say so, I feel that the presentation of this case in paragraphs 184 *et seq.* of that Despatch is admirable. What are the Government of India concerned with regarding the apprehensions of the British commercial community? In paragraph 184 they say:—

> "The question is both important and difficult, for while we cannot but sympathise with the earnest desire of Indians to see their countrymen taking an increasing share in the commercial and industrial life of the country, we must also take account of the anxiety with which European business men regard the future after the transfer of power has taken place, and in so far as this anxiety may seem to be well founded, we are concerned to provide safeguards against injustice."

In two subsequent paragraphs they deal with two items which they call comparatively simple items. In paragraphs 187 and 188 they deal with the main subject of the apprehensions of European commercial men because they compete on equal terms with Indian enterprise. In paragraph 188 the Despatch has this sentence:—

> ". . . . important sections of Indian opinion desire to secure the rapid development of Indian enterprises, at the expense of what British firms have laboriously built up over a long period of years. There is nothing surprising in the fact that national consciousness should thus have found expression. Indians who desire to see the growth of Indian banking, Indian insurance, Indian merchant shipping, or Indian industries find themselves faced by the long-established British concerns whose experience and accumulated resources render them formidable competitors."

Thereafter in paragraph 189 they say this:—

> "No one, we think, could fairly claim that the discretion of the Legislature should be fettered, except to the extent necessary to secure justice to those firms which had already established themselves in this country."

Now, as has been repeatedly said by my Indian colleagues who have addressed the Committee before me, and by myself yesterday, we are agreed that the strictest provision necessary to this end should

be made either in the Statute or in any other manner which the Government here think necessary to ensure that no injustice will be done to a British interest, *qua* British interest. No injustice should be done simply on the ground that it is a non-national who will suffer by it. But I wish to ask whether a policy desirable in the national interest should be held back because a Britisher may be one of those affected by it. Such a policy should not and, indeed, would not be held back if an Indian or Indians were affected by it. Thus this demand of the Britisher seems to amount to something unwarranted—not to use a stronger word. Are the British in India not yet prepared to identify themselves with the interests of India first, second and last even though they are assured that no injustice could be done to them as a Britisher or a non-national?

In paragraph 189 the Government of India put forward in very eloquent manner the necessity of doing justice to both British and Indian points of view. They very cautiously, if I may say so, offer no solution of the difficulties themselves. They emphasise the desirability and indeed the necessity of leaving the solution to be brought about by negotiation at this Conference. Whilst the Government of India thus find the problem to be one which does not offer a solution by means of despatches I feel that it is unfortunate that we cannot spare the time now to have this matter thrashed out in a sub-Committee or by private negotiations.

I do not think I am giving away any secret if I say that during the last five weeks or so conversations have been going on between a few in this Committee, and I do not think that those conversations threatened to break down or to result in nothing; but, in view of other factors which developed in this period here and diverted the attention of some of those who were taking part in these informal conversations, no conclusion has been yet arrived at, although I think it would be only right to say that as a result of the conversations the two opposing views appeared to draw nearer and certainly not to draw furher apart.

In paragraph 188 the Government of India give out a note of caution which I would like the Committee to note carefully. They say:—

> "We feel real apprehension as to the consequences which may ensue if the present attitude of mutual suspicion and embitterment is allowed to continue and grow worse."

I feel, Sir, that this sentence in the Government of India Despatch, as far as this particular problem is concerned, has very great significance. If no settlement can be arrived at at this Conference, I wish to ask in all seriousness: Is it likely that a better settlement would be arrived at in the future—either the near or distant future?

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Let me, Sir, refer to one subject which, although it may not have been mentioned until now may be uppermost in the minds of

several here. A good deal has been said regarding the way in which the relations between England and India have been embittered and strained by the movement which has been known as the "boycott movement." Is it likely that this movement will completely die out because we arrive at certain decisions which do not substantially accord with the objects which we wish to secure? I wish very frankly to state that statesmanship requires that by any method that you like, and at the sacrifice of any amount of time which you think is necessary, we should not be allowed to leave London—I deliberately use the words—we should not be allowed to leave London until we have settled this question in a manner in which men alone can settle now or will be able to settle in the future. No demi-god or angel from above will come down from the heavens in order to ensure settlement of this. I therefore feel, Sir, that as far as the constituency which I have the honour to represent here is concerned, I cannot do better than read out to you a resolution which they passed at their last general meeting in Delhi in April, 1931:—

> "The Federation of Indian Chambers of Commerce and Industry disapproves of clause 14 of the Report of the sub-Committee No. III of the Round Table Conference which deals with the rights of the British mercantile community. The Federation cannot agree to any restriction on the discretion of the future Government of India, to which there is no parallel in the constitution of any other free country, as in the opinion of the Federation any restriction of the kind suggested would so fetter the future Government as to render it powerless to protect or promote indigenous enterprise and that the Federation puts its view on record that no reservations or safeguards of any nature whatsoever will be acceptable unless they are proved to be in the interests of India."

Chairman: I did not catch what clause you said. Did you say it was referring to clause 3?

Sir Purshotamdas Thakurdas: Clause 14.

Chairman: It is at page 48.

Lord Reading: I could not follow it. Is the objection of that Conference to clause 14 as agreed at the sub-Committee?

Sir Purshotamdas Thakurdass: No, the objection of that Conference is to the vagueness about the clause which is being discussed here. The question of this vagueness has been the underlying reason of Mr. Benthall's speech.

Sir Tej Bahadur Sapru: Which clause do you mean—the clause as it originally stood there, or the clause as finally accepted?

Sir Purshotamdas Thakurdas: The clause as finally accepted.

Lord Reading: It is the amended clause 14.

Sir Purshotamdas Thakurdas: Mr. Benthall further referred to the trade relations between England and India. My friend

Mr. Jayakar has dealt with this and I do not wish to supplement his remarks because I do not think there is anything more I can usefully say at this stage. But there are funny apprehensions in connection with the likelihood of India under a self-governing Government building up enormous tariff walls immediately against imports from abroad, including perhaps imports from Great Britain. I have been in the Central Legislature for the last seven years, and unless I have grossly misinterpreted the inclinations of members from the rural and urban areas in the Central Legislature I am convinced that the reformed Legislature of the sort that we contemplate in a self-governing India will be very chary about passing any legislation regarding import tariffs, and that they will bring up with greater emphasis than has been done till now the question of the interest of the consumer. I myself feel, and I have said it before now, that the opposition that has been forthcoming till now in the Central Legislature regarding any protective measure is likely to increase at least ten times if people were assured that there was no control being exercised from outside India and that the Government of India were free to take decisions on the merits of a case as it affects India alone. I say, therefore, that any apprehension regarding tariff walls being put up as soon as we come into power is based on very wrong grounds. I am convinced myself that no such apprehensions are justified at all.

Mr. Benthall thereafter referred to the question of Imperial preference, and what more eloquent conviction can he want than what the revered Mahatmaji on the other side of the table said in his first visit to Manchester, when he said that as soon as the political problem is settled he sees no reason why India should not extend even Imperial preference to Great Britain.

In regard to this, however, there is a tragedy to which I should like to refer. It was not more than about eighteen months ago that when some protection was being devised by the Government of India against imports from Japan into India, it was coupled with what was almost a dictation—I understand it was—from Whitehall that this should be coupled with preference to piece goods from Lancashire. Several of those who are present here, reasoned with, implored and beseeched the Government of India to drop that part of the measure and allow the rest of the legislation to go through. Our request in this direction not having been heeded, members like my revered friend Pandit Madan Mohan Malaviya and others thought it necessary to resign from the Assembly. The tragedy of it is this, that what was carried through the Assembly in such a manner was hardly of any avail, and to my mind it has been almost a dead letter as far as being effective for Lancashire.

I therefore feel that what is required is greater trust. Trust us in India to do the right thing; trust us not to do anything unfair, and trust us also to rely more on England in a friendly spirit and in a spirit of seeking co-operation, even of seeking help from Great Britain.

Reference has been made to the Report of the Indian Fiscal Commission as far as the minority part of it is concerned, and particularly with regard to the question of Imperial preference. I know that the Indian commercial community stand by every word of what has been said there, and we look forward to the day when we shall have a Legislature which will be free to impose, to modify or to withdraw or to alter Imperial preference with the vote of the elected members of the Legislature, without any weightage from either nominated or official members therein. If no preference for Great Britain has been considered in India till now, it is because we have not had the Legislature which has been envisaged in the minority Report of that Commission.

Reference has been made to activity in India regarding Indian insurance companies. Here also I have a short history to relate. It is about five years since we in the Indian Legislature pressed the Government of India to modify the Indian Insurance Act in a manner which would make it difficult for companies of indifferent standing from foreign countries to come to India and canvas for business by offering enormous discounts. The Commerce Member of the Government of India agreed that it was necessary to do this; in fact, there were several promises by him that a draft Bill would be put before the Legislature in a few months time. Months passed and years passed. We got a little impatient, and we were then finally informed that the whole thing was being held up until you in England passed legislation with reference to your Insurance Act. This legislation here having been held up, the very necessary legislation in India has not seen the light of day, and it is feared that we in India shall have to wait several years longer unless the constitution is substantially changed.

My Lord, there has been great resentment shown during the last five years in India, and here also regarding the manner in which Indians push forward Indian insurance companies and want their policies to be accepted all round. I have been one of those who have had something to do with pressing the claims of Indian insurance companies in this connection. We have been told that Indian insurance companies are not as substantial and as sound, and have not such large invested capital and reserves, as British companies and some of the others. That is only natural. We started in this direction only in the last ten years. I know of one or two Indian enterprises in this connection which were started at the beginning of this century but for several reasons which I need not go into to-day those insurance companies had to go into liquidation. I want to say however, that there has been no case known until now where an Indian insurance company has gone into liquidation letting down its policy holders.

All that was desired is that Indian insurance companies should be put on the approved lists of the big corporations which work in India. Some progress I must say has been achieved in this direction but it has been very tardy and slow progress and not without considerable agitation on the part of those who are interested in

this being put forward. I compare with this what I have seen during the last few weeks in London. There is at present a campaign being conducted for the purpose of making people buy British goods. " Buy British Goods " is a slogan which I myself endorse for England and it has the approval of no less a personage than His Royal Highness the Prince of Wales. Only three days back I understand His Royal Highness broadcast a very important speech asking people to buy British goods. All that we do regarding insurance business in India is that we ask people to insure in Indian insurance offices and they may select the best or any of them. I repeat that there has been, as far as I know, no Indian insurance company which has let down its policy holders.

Lord Reading: What is your argument? It is rather difficult to follow. Do you suggest that there has been any interference with Indian insurance companies by the Government of India?

Sir Purshotamdas Thakurdas: Not as far as the Government of India are concerned, but as far as other corporations are concerned. British banks also I understand hesitate to accept Indian insurance policies. Perhaps Lord Reading would like to know that there was a circular issued by the Government a few months back where the propaganda was in the direction of showing how dangerous it is to insure with Indian insurance companies.

Sir Samuel Hoare: I should very much like to have a copy of that circular. I have not seen it.

Sir Purshotamdas Thakurdas: I can fully understand that Sir Samuel Hoare may not have seen it, but I am sure the Government of Bombay will be able to send him a copy of it.

Sir Samuel Hoare: I am informed that here in London we have no such copy and I have no information on the subject at all.

Sir Purshotamdas Thakurdas: There has been correspondence on it.

Sir Samuel Hoare: There has been no correspondence with the India Office.

Lord Reading: May I ask one question?

Sir Purshotamdas Thakurdas: May I reply to Sir Samuel Hoare? I will certainly try to get all the correspondence in connection with this case but obviously you do not expect me to have it in my possession in London.

Sir Samuel Hoare: No; but you state that the Government of India were making propaganda against Indian insurance companies.

Sir Purshotamdas Thakurdas: Yes.

Lord Reading: You are not saying the Government of India, are you?

Sir Purshotamdas Thakurdas: The Government of Bombay. The circular was put forward by the Government of Bombay.

Lord Reading: The only point I want to clear up is whether you are referring to the Government. If you are referring to the

Government of Bombay I think I know something about it. I have only heard about it and you know a great deal, but am I not right in saying that the circular—I am not defending it, I have not seen it and if it is what you purport to say I should not attempt to defend it—am I not right in saying that it was issued in consequence of the movement carried on to boycott British insurance?

Sir Purshotamdas Thakurdas: It was issued at the time of the Civil Disobedience Movement, but I wonder how the Government of Bombay or any Provincial Government of India would be justified in issuing a circular under the official authority of the Government running down any Indian insurance company or the Indian insurance movement as a whole.

Sir Samuel Hoare: We had better wait for a copy of it.

Sir Phiroze Sethna: May I be allowed to say in regard to this circular, that in the Council of State I asked the Government of India if they knew that this circular was issued by the Government of Bombay and, if so, that it was issued with their knowledge and consent? In their reply the Government of India could not deny the existence of this circular, which was distributed broadcast with the help of police sepoys in the city of Bombay. The circular was aimed more at Indian banks than at insurance companies, and I referred to it, My Lord, in my speech of last year, a copy of which I have just sent for from the Secretariat.

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Chairman: We will try and clear this up.

Sir Purshotamdas Thakurdas: Sir, a good deal of the suspicion that I referred to in the beginning has arisen from the Bill which is now known as the Coastal Traffic Bill. I personally feel that it cannot be the intention of anybody, including Mr. Benthall, to withdraw from the new Government any power that the existing Government have. In fact, what is *intra vires* to-day I do not think should be made *ultra vires* hereafter. But in connection with that I have come across a somewhat striking circular letter here since I arrived which I propose to read to this Committee. It is a circular letter which was sent to all candidates for Parliament at the last election. It is a letter issued by the Mercantile Marine Service Association of Tower Building, Water Street, Liverpool—an association which claims to be the senior representative body of British Shipmasters and Officers. It is a comparatively short letter, but it is so important that I am sure my colleagues would like to hear it.

Chairman: What is the date of it?

Sir Purshotamdas Thakurdas: The 20th October, 1931. It reads thus. The heading is:—

"45,000 British Seamen unemployed.

Sir,

There are over 700 British-owned ships lying idle in the ports of the United Kingdom.

Foreign-owned ships, carrying smaller crews and paying wages below the British standard thus capture cargoes which should be carried in our British vessels.

In our coastal trade it is estimated that foreign-owned vessels will this year carry over 750,000 tons of cargo from port to port in the U. K.

Foreign maritime countries confine their coasting trade exclusively to their own nationals, not only with success, but with profit. Why should we not take a leaf out of their book and insist on British cargoes being conveyed under the Red Ensign.

In the coastal trade alone it is computed that no less than 66 vessels flying the British flag are thus deprived of trade and 600 British merchant seamen debarred from earning a living.

In our national interests this unfair competition should be stopped, otherwise this country will lose entire control of the carrying trade.

My Council, the senior representative body of British Shipmasters and Officers, wish me to respectfully enquire what you are going to do to combat the unfair competition which drives British-owned ships into dock and our sailors into idleness.

I am, Yours faithfully,

THOS. SCOTT,

Secretary."

If, Sir, this is the aspiration of an important association in Great Britain—the country which rules the waves and which has the most premier position on the high seas—is it surprising that we in India should aspire to a little activity in that direction? The details of it are not a subject to be considered in this place; the Legislature in India would be the right place; and there are the usual powers reserved under the constitution, to which everybody agrees, with the Governor-General.

Why make so much of the aspiration of a country which feels that it has been kept back from its natural share in shipping activities? And how do you in London justify this circular which has been sent out by the most powerful of interests in the premier country in the world which has command over the seas? I wish, therefore, only to point out that the Coastal Reservation Bill and our aspirations in connection with it should not act as a red rag to Britishers here. I cannot help feeling that unfortunately too much importance has been given to that one Bill, and I feel that under the new constitution and the protection about racial discrimination which we are offering there is power reserved in the ordinary course which will meet with anything unfair being done.

Mr. Benthall has referred to reciprocity in countries which are to be given the rights he asks for in India. I know that many will see comparatively little objection to it, but I want to point out that so far as trade with Great Britain is concerned the effects of reciprocity will be of little or no value to India. What has India to gain from England reciprocating in the way which Mr. Benthall has indicated? It has to be noted that in spite of the relations between Great Britain and India during the last hundred years at least there is no Indian house or firm established here which does commercial business with India on a scale which can be computed in any respectable proportion to what is being done by British houses. I am not criticising it; I am only mentioning a fact. For whom is the system of finance which is known here in the London money market as " house paper "? This means that all firms which have their head offices here, or important offices here, and have branches in India, are allowed to send out exports to India for import there, and instead of drawing on their branches or agents in India they discount that paper here with the endorsement of one of the exchange banks here. That has in practice been restricted to British firms only and no Indian firm or house has come in for that facility. Again I say I am only mentioning a fact; I am not criticising it. It may be said that it is due to lack of enterprise of Indians. Possibly; but if, after a hundred years the enterprise of Indians in London is at such a low ebb as this I only wish to point out that reciprocity cannot mean much to us for a long time. The Bank of England has a rule—very necessary perhaps, and may be very justifiable; I am not complaining about it—that any paper which is discounted by it must have the signature of at least one British party or bank. In addition the Baltic Exchange and the jute salerooms here were not open to Indians until very recently. Jute is a monopoly crop of India, and it was not until 1929 that, thanks of the efforts of Lord Irwin and one or two other British commercial friends here, the doors were thrown open to one Indian firm in each of these two places. Even in the jute salerooms here, where it is the sole monopoly of India that is dealt in, the doors were closed against any Indian firm or personnel being members of it.

I, therefore, feel that whilst we note the reciprocity which would be available to us, and which is open to us to-day, there is nothing in it which affords any sort of advantage which can attract the Indian.

Mr. Benthall says we are equal partners in a Commonwealth of Nations, and asks us to avoid the risks of discrimination and bitterness. In fact, he asks us to come into an equal partnership where, if I may use a colloquial phrase, " what is mine is my own, and what is thine is ours jointly ". It would be a partnership in a commonwealth which has no precedent or parallel. It would put a clog on the economic advancement of India and impose an irredeemable mortgage on the economic improvement of the country, and render all improvement of political status such as is envisaged by this Conference completely nugatory.

My earnest appeal is that the British commercial interests should trust the Legislature and rely on the powers vested in the Governor-General in the ordinary course. They should trust to the theory that money knows no artificial boundaries, and that greater co-operation between Indians and Britishers is bound to come about with the satisfactory solution of the political problem. There is no distrust of external capital *per se;* what is being distrusted is any capital which may lead to handicaps to the development of the country as it should develop, handicaps which would not be allowed in any country.

Why should India prefer for trading and purposes of borrowing any other national to the Britisher? India will need all the capital which anyone can give her, but she will take it and appreciate it only on the usual commercial terms, without involving political shackles. Of all the various nations, the British know Indians and India best, both our strong or good points and our weak or bad points. There is no need to imagine or apprehend any discrimination being exercised by India under the new constitution on the Britishers there. Will not a self-governing India, with all the responsibility it must carry, be conscious of the risk of any unjustified action?

The atmosphere of suspicion under which both sides labour requires to be dispelled by self-confidence on the side of the Britishers and a pledge on the Indian side that they will not discriminate to the injury of the other side. These things should dispel that atmosphere. In fact, as I have said, we are quite prepared to have it in the Statute that there shall be no discrimination *per se* against any non-national.

I look forward to greater co-operation between Indians and Britishers after we know that we are free to manage our own affairs. There is, however, one condition, namely that this question should be settled now, without further embitterment and distrust. If England wishes the solution of this question, and I do not doubt it, you will be able to solve it best now. What further factors hereafter can simplify the solution? Further investigation and delay must mean impoverishment and set-backs, and what more fertile soil for communalism and for undesirable tendencies in general can there be than poverty, and increased poverty hereafter? And that may occur as a result of the discontent which may be aroused if the question of political progress is not settled now.

Finally, I wish to refer to the psychological effect of the right step now on India. India is known to be a land where the people do not easily and lightly forget any good turn done to them. We are known to be a set of people who are always grateful for any good turn. I submit that this is the occasion when, if this question is settled without delay, Indians will feel grateful, and the two countries will be drawn nearer and nearer together and no further artificial safeguards or shackles will be necessary.

I have done, My Lord.

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Lord Reading: The subject that we are discussing is of very great importance both to British subjects here and also in India. I do not propose, in the observations that I shall make, to travel into a series of specific cases such as have been referred to, especially by Sir Purshotamdas Thakurdas just now. If he will forgive me for saying so, I think they have very little bearing on the points that we have to consider.

What we are discussing here is a matter of general principle. I quite appreciate that it may be useful to illustrate an argument by a specific instance but the difficulty I find in following the matter is that except in one case to which reference was made—that is the Government of Bombay—the rest of the instances were not actions by Government at all but were actions by individuals in the course of competition in business. I think we are not at all unfamiliar in this country with that sort of thing. Smaller houses suffer equally in this country from the action of larger houses who may have greater power. The larger house with its reputation and its capital has advantages over the smaller house. I do not propose to go into these instances for the reasons I have given and I am sure I shall not be misunderstood by Sir Purshotamdas Thakurdas. It is not that I do not appreciate their value from one point of view but I cannot see myself that they help us to solve the problems that we have in mind. I propose to address myself to a general question and to attempt to find some solution of the points at issue.

What I would desire to say at the outset is that I was myself much impressed by the statement of the case made by Mr. Benthall who evidently on behalf of the Association which he represents has studied the case in every possible shape and form and put it very moderately and also with the desire to arrive at agreement. He was ready to carry on negotiations and indeed Sir Purshotamdas Thakurdas has also had something to do with negotiations. I know his power and influence and the assistance he can give in these matters and I know that he has been trying to arrive at a settlement. It is a pity that it has not been reached at this moment. I would add that the speech made by Mr. Jayakar impressed me very much. If he will allow me to say so I thought it was the speech of a man who had approached this large question of principle with a real desire to deal fairly and justly with the subject and to seek every possible means of finding agreement, realising, as I thought he did very well, the necessity for avoiding any conflict of opinion on a question of discrimination against the British traders and desiring on the larger principles of justice and equity that there should be no discrimination. I mean to follow the lines that he put forward and to attempt to contribute to the solution and also to deal with some of the later observations of Sir Purshotamdas Thakurdas.

But, My Lord Chancellor, nobody can have listened to the discussion which has taken place to-day, yesterday, and throughout the Conference, last year and the beginning of this year, without realis-

ing that in truth on the broad question of principle, which is after all the vital matter, there is no difference of opinion. There is a much greater body of agreement than would be imagined in listening to the speeches. There is a danger sometimes, when one strays off the broad road and gets into past history, of introducing some bitterness. I shall refrain from doing that; I want to deal with the facts. I would only say to those who dwell upon matters that have passed in the history of India that the principles of government, and of just and fair government, have undergone much evolution during the last hundred and seventy years, and that that not only applies to Great Britain and to the Government of India, but to everything that obtains in India, and that has made such steady substantial advance and progress by its relations with Englishmen, by what they have taught, by the principles of justice and equity which are so dear to us and which India has adopted from us.

I want, therefore, to take first the broad question and then to deal with the difficulties that arise on it. I understand that there is no question of dispute, and I am not now going to deal at this moment with the particular formulæ that have been referred to; but this is the general principle if I am right. If I am not right I shall be glad if I am contradicted, because it is of the essence of the argument that I am putting forward. In general principle everybody here at this table recognises that in trade, commerce and industry no distinction shall be made, either in legislation or in administration, between Indian and British subjects or between Indian and British corporate bodies. I understand there is no dispute about that, and indeed I should not imagine that there would be. Certainly from what I know of India no Indian would stand forward and say that what he desires is to draw a distinction, either in legislation or in administration, between a British subject and an Indian subject; he does not want to do that. I am not leaving out of account what is at the back of his mind and what is at the back of some of your minds when I am mentioning this proposition; but that is the basis upon which we proceed and it is a basis upon which there is agreement. Nobody wants in India, if you have the fullest powers of Government, as I understand it, to penalise a British subject as a British subject, or to distinguish between him and an Indian in the carrying on of his trade. That is not your wish at all.

I gather that there would be no difficulty, therefore, in arriving at the proper formula upon this subject. There have been a number of attempts to reach a formula. I had the honour of presiding over a committee on which a number of us sat at the request of the Prime Minister, including Sir Tej, and, if I remember right, Sir Phiroze Sethna, and a number of others; and we eventually reached the formula which is now on page 49 of the Report. It has been said that that is a vague formula. Well, I agree that it is neither specific, nor is it very precise. To my mind it has advantages in that respect because it is elastic. The very reason for making a general formula was at any rate because it was felt that one could not always picture to oneself the specific cases that might arise.

If I might venture not in the slightest degree to criticise but to suggest to Mr. Benthall and his colleagues of the European Association the difficulty that I think we are in with regard to the various instances given, and which made a rather formidable catalogue of matters to be dealt with, it is that they are the specific instances in which they think it probable, or I will not say probable but possible, that there might be discrimination, and therefore they want those matters specifically dealt with. Well, for my part I would prefer the general method. The general method has the advantage that it covers not only the specific cases to which reference has been made, and which are in the minds of those who are dealing with it, but also the specific cases which may arise in the future; because no human mind can foresee what, in the developments of business in the world, may be the specific cases that may arise; and I confess that I am more disposed to the formula of general application than to dealing with the specific instances to which reference was made; and although I do not for a moment suggest that this formula is perfect—it was evolved by us in a morning's consultation after a great deal of discussion—yet it had the merit, and it was a great merit at that moment, of receiving the assent of everybody except, if I remember aright, that of Mr. Jinnah; and Mr. Jinnah will forgive me for saying that at that particular period he was in a non-assenting mind.

Mr. Jinnah: Lord Reading, I still hold the same opinion, and you see the difficulties you are face to face with now in preparing this formula.

Lord Reading: Well, I did not expect Mr. Jinnah to say anything else. I should have been disappointed if he had told me that he had now come round to my view. But, of course, I accept that and I stated it at the time, I think, to the Prime Minister. That is the position, and, as I say, although I am not pressing for this particular formula I do think it is a formula which will be of considerable use when we come to put into practical shape what should be accepted, because it has the advantage—and that is what we are seeking to obtain here—of general agreement, and it covers a number of cases.

I am also impressed, very much impressed, by the reference to the Nehru Report. It is said there—I do not know that I am quoting the exact language; I do not happen to have the amended Report—that it was quite inconceivable that there should be anything in the nature of discriminatory legislation. That was the view of the All-India Committee, and I accept that, and we may start from that basis. Therefore, it being inconceivable, there cannot be any objection, so far as we can, of course, to our making provision to possibilities. We have got to protect against possibilities, because we always have to remember that it is not to protect against those who may be sitting round this table, and who may be taking part in the discussion. They will not be there always, and, indeed, if I may be forgiven for saying so, one is not sure which of them may be there at any time. We

know from experience in this country how changeable the electorate may be. I am sure you will agree.

Mr. Wedgwood Benn: I do agree!

Lord Reading: All that I want to say with regard to it is that in view of that I proceed, as I think, upon a line which is clearly marked out, and with no difference of opinion. It is for that reason that I am mentioning it and laying great stress on it. I might be asked then, " If you agree that it is inconceivable, as the Nehru Committee thought, that there should be discriminatory legislation, why do you want to legislate against it? " Well, of course, the answer is the one I have given you just now.

One has to bear in mind the future, and that the constitution which is now being made will last, I hope, at any rate for a considerable time.

Now, Lord Chancellor, that being the starting point, I would only just refer further to the definition of citizen and the declaration of fundamental rights. I am referring to these because I think taken together, if I may suggest it, those who are so familiar with the very difficult art of drafting Acts of Parliament will be able to put into language what is in our minds and what I am trying to prove is agreed between all of us.

Now, the definition of " citizen " as amended in the Nehru Report—I think it is on page 27—is " a person who, being a subject of the Crown, carries on business or resides in India ". That is a citizen, and that citizen is to have all the rights enumerated in the declaration of rights; and that definition of a citizen, as I understand it, would cover everybody who resides there as a citizen or who carries on business in India.

I have two difficulties with regard to that to which I want to draw attention, but only for the purpose of giving assistance at arriving at a conclusion and not because I think there are differences of opinion. One difficulty is that that would not cover, in relation to business, either firms or corporate bodies. I understand there is no objection to that, and indeed Mr. Jayakar said quite frankly that he drew no distinction between a company and a corporation, and his whole argument tended to prove that he drew no distinction either between a natural person and a firm and a company or corporation, and obviously not. For this purpose, therefore, one would have, whatever may be the rights that are involved in citizenship, to take it to apply to corporate bodies and to firms as well as to persons.

Then one very strong objection I should have myself merely to this as a definition, and to its being taken as giving all that is required, is this. The point was put to me, I remember, when we sat on this Committee at the beginning of this year and I then objected to it. This has one very grave disadvantage from my point of view, and I think our Indian friends will agree. It not only involves citizenship but it involves something more, namely that in order to become a citizen of India a person must cease to be

a citizen of this country. Well, that is fatal from our point of view.

I do not mean to mention any names, but I would ask you to think for a moment of those who are identified with business in India, with Indians, but who are British subjects, who are domiciled here and are citizens of this country, but who have lived in India for a great many years. If they have to become citizens in the sense of this definition for the purpose of getting these rights they would have to become naturalised, they would have to lose the citizenship which they have in this country.

I think that obviously the objection has only to be stated for it to be seen that that is impossible as a definition to meet the cases with which we are dealing. You could not think of asking a man who is in the relation of which I have spoken to give up his citizenship in this country in order to get the right to carry on his business in India and to get the same rights as the Indian-born subject. Therefore, if it is to be used in any way, there must be this further amendment to it, that if a man becomes a citizen of India it does not involve the giving up of his citizenship in Great Britain or the United Kingdom. But even then I confess I am not satisfied because I do not think it goes far enough. The definition carries you a long way but may I call attention to the one particular subject which is not quite clear to me? I thought as I followed Mr. Jayakar that he had answered the question but I am not quite sure and therefore I would like to have his attention now. I quite understand the position as stated by him with regard to any concern—either a person or a firm or a company—carrying on business resident in India. What was not quite clear to me was the line he was taking with regard to those who were not resident in India but who were carrying on business in India. What I mean is this. Here is a person carrying on business who is not resident in India and has no intention of going to India but who has business relations there, correspondents and agents who sell his goods. He is carrying on business in India but he is not resident there. As I followed some of the observations I took it that it was not intended that he should be deprived of the same protection. It was intended I thought that he should have the same right to trade and that there would be no discrimination against him as a British subject carrying on business in India. I understood that no distinction was to be drawn. Am I right?

Mr. Jayakar: "Either carries on business or is resident." These are the words in the Nehru Committee's definition.

Lord Reading: Yes, but that does not answer my point. I may read that and I do read it to mean that if a man is living here and carrying on business in India there is to be no distinction. Is that also what he means?

Mr. Jayakar: Yes. "Who being a subject of the Crown carries on business or resides in the territory of the Commonwealth." Therefore if he carries on business or resides in the terri-

tory of the Commonwealth that satisfies the test of the definition as laid down here.

Lord Reading: I am quite satisfied so long as the question is answered as I was putting it and I understand that is so.

Mr. Jayakar: For the purpose of carrying on business one may not be resident in the ordinary sense of the law.

Lord Reading: If I may put it perfectly clearly suppose A is living in this country and is trading with India. He is carrying on business in India but he is not resident there. As I understand it there is to be no discrimination against him any more than against a person resident in India. Is that right?

Mr. Jayakar: Yes. That would follow from the words employed in the Nehru Committee's Report.

Sir Tej Bahadur Sapru: Perhaps His Lordship will allow me to explain the origin of this after he has finished.

Lord Reading: That makes the position sufficiently plain for me and I accept that. It brings us to this, that certainly, in general, it is not intended that there shall be any discriminatory legislation or administration against British subjects. I understand that to be admitted. The only question is therefore how we are to put that as a formula to give proper protection. So far there is no difference of opinion. The result of all the discussion shows that there is a very great body of agreement.

Now there are two questions which I think arise upon that. One is: Should exceptions be made, and, if so, in what cases? And the other is: By what method should these rights be secured to the British? Now I find some difficulty in appreciating exactly the kind of exceptions that were in the mind of Mr. Jayakar and to some extent also of Sir Purshotamdas Thakurdas. That there are exceptions is obvious. They were spoken of as special cases or cases requiring special adjustment or special treatment. No limit is placed to them at all; therefore, if you have them unlimited your definition is of no use because you may have exceptions as often as you please. Therefore, it is obvious that you must have some limitation upon those special cases if your definitions and the principles which I have just stated are to be accepted as governing the relations in commerce between Britain and India.

Now, I have found difficulty in understanding for this reason. I quite follow the argument that where, for example, in future public utility undertakings or public concerns in which public money is to be invested or used, the Government of India may say: Well, we think that a company which is to get the benefit of the subsidy that we shall give or of the advantage that we shall give by some direct payment or use of money, must be a registered company in India with rupee capital, with a moderate reasonable proportion of directors, and with a reasonable and moderate proportion of Indian shareholders. It may be that I go further than some of my colleagues in thinking that that is not an entirely unreasonable proposition for the Government of India to put forward.

I am not sure that I am right in this, because it was sometimes difficult to follow, but I understood that Mr. Benthall raised no objection to cases of the kind to which I have referred.

Mr. Benthall: Except in the case of shareholders, where the Committee itself turned down the proposal on practical grounds and on the grounds that it would be a restriction on Indian shareholders, and prabably on the value of their shares, and for other reasons.

Lord Reading: I was going to refer to that. I agree. Of course, it is a question of reasonableness.

Mr. Benthall: Yes.

Lord Reading: I was going to make an observation upon that. It seems a little absurd to say there must be a proportion of shareholders, because they either may or may not wish to invest their money; and it seems ridiculous to say you must have a proportion of Indian investment when they may not be willing to put in their capital. I do not suppose for a moment that would trouble the Indian Government. What they really want is to feel that if there is a company of this kind to which special circumstances do attach, there should be special conditions of the character to which I have referred.

Now, of course, in what I have said I was dealing—and, I think I am right in saying, in what the Committee at that time were considering, they were dealing—with future companies and not with companies already in existence. Obviously it would not be right to go back upon rights that have been given; but in those future companies and within those limitations I myself do not see that there can be any particular objection.

I do not regard that myself as discrimination where it is dealing with these public utility concerns. It is a different character of legislation, and in any event I do not myself desire to press any further than that. I think I agree entirely with what Mr. Benthall has said on the subject. I am glad that the European Association have taken that view. I think it came up for discussion during the time that I was Viceroy, and my recollection—but I confess I have not looked it up—is that we accepted the views of the Committee as regards future undertakings.

Now, that is an instance of a case that I follow. I cannot help pointing out that that never can come, and it never is intended to come, under discrimination. Where I felt some difficulty, and still do (and it is not lessened by what Sir Purshotamdas was saying this morning), is in reference to what was called undue competition. That troubled me. As I understood from what Mr. Jayakar said, his view was that if there was undue competition of a powerful company against a small company that was trying to make its way, then there were special circumstances which could be dealt with in a special way. Well, I hope that will not be persisted in, because to my mind that is the danger-spot in the whole of the discussion which is now proceeding.

Mr. Jinnah: Quite right.

Lord Reading: It is the real danger for this reason, that when Indian politicians speak of anything in the nature of special circumstances in this connection they are not thinking of discriminatory legislation or of discriminatory administration by that name, or which would appear on the surface; not for a moment. That is not how they would proceed. What they have in mind, and what I rather understood when these observations were made both yesterday and to-day, is—suppose you have a powerful British concern, either a firm or a company, with large capital, with a business which it has built up over a great many years in India, and that that is making profits in India, and there is a small Indian concern which is trying to compete with it, but which has the disadvantage which is inherent in every small firm in competing with a larger—there are some advantages too, but there are disadvantages, as we all know, in this country as well as in India—now if, as I understood it, it meant that then there could be discriminatory administration or legislation in the sense that you could penalise in some way that British powerful concern in order that you may enable that Indian concern to flourish, if that is what it meant then I would oppose that root and branch. I think that is fundamentally wrong in principle. I think it hits straight at the principle of discrimination, and if it is intended to do it I think it would be unfair to the British who have those rights there now, and who ought to have those rights continued.

Mr. Jayakar: I was speaking of cases which I had in view. I did not mention them because I thought the discussion would go in an entirely wrong channel if I mentioned those cases, but I have cases in view where that powerful concern adopts unfair means towards a smaller Indian concern. I had those cases in view—not legitimate competition, but where a big concern adopts unfair means to carry forward its concern.

Lord Reading: I am much obliged. I am just going to deal with that side of the question. I was going to say this, that if it leads—as some observations did undoubtedly lead, including some that were made this morning—to the suggestion that there is what is called unfair competition, then the general law of the land applies. You cannot have a law directed against one particular company or one particular concern; you must have the general law of the land made applicable to them. If it is unfair competition, then it is unfair competition not only in that trade but in every other trade, and if it is unfair competition and you want to legislate against it, then you must legislate against it for all trades. That is the point that I want to make quite clear.

You may even say that it happens that in one particular trade and not in others that to which you take exception goes on. In such a case if it is unfair you are obviously entitled to legislate against it, and no one would ever make a suggestion to the contrary; but if it is merely unfair because the concern happens to have achieved its great and powerful influence either by its capital or by its reputation or by the associations that it has made,

then obviously you could not attempt and you ought not to attempt to legislate against it. However difficult it may be for an Indian nascent company to progress where there is a powerful company in the same line next door to it, it may be, you cannot legislate against it and you cannot take administrative acts against it; competition must be the law that must determine the matter; you cannot help it.

That is why I refer to this as the danger point, because some of the observations led me to think that the desire was, or might be, that there should be either legislation or administration which would enable the small Indian concern to be at an advantage as compared with the British concern which happened to be the more powerful one. If that ever is or was the principle advocated, I do hope that the result of our discussion will be that that will be given up. It obviously ought not to exist. I think that was what was in the mind of the Government of India when in their Despatch they made the reference to which Sir Purshotamdas referred this morning. He said " What has aroused their fears is the tendency displayed in certain quarters to advocate measures designed to secure the rapid development of Indian enterprises at the expense of the British concerns already established in this country ".

Now, I would go just one step further than that. I draw no distinction myself between " British concerns already established in this country " and British firms or persons who wish to carry on business in the country in the future. I should have thought they had just as much right, upon the lines upon which we are proceeding, as the Indians would have to come to this country and carry on business here, where they have complete freedom, just as we claim there must be complete freedom for the British subjects who go to India.

Now, Lord Chancellor, I do very respectfully draw the attention of my Indian colleagues at this Conference to the danger that arises from those circumstances. I am not referring to unfair competition. Of course that could be dealt with and may be dealt with, but at the same time under the guise of what is called unfair or undue competition there must not be legislation introduced or administrative acts which would benefit the Indian smaller concerns at the expense of the more powerful British concerns.

Pandit M. M. Malaviya: Would that stand in the way of the Indian Legislature taking special measures to give encouragement to Indian industries by protection or bounty?

Lord Reading: To the indigenous trade of course it would not. I gather that what is meant is that a trading body doing particular things would get the benefit of the bounty. It would not make any difference whether it was Indian or British.

Pandit M. M. Malaviya: In the definition suggested of citizenship a Britisher resident in Great Britain and carrying on trade in India would be included.

Lord Reading: Yes.

Pandit M. M. Malaviya: That brings in all Britishers trading in India. Many are powerful concerns. Indian industries at present cannot compete with them obviously and so India desires to give them special encouragement and protection. Would it be possible for India to do so? Would it not be right? So long as there is legitimate competition we do not want discrimination against Britishers but this second proposition of Your Lordship stands on a different footing.

Lord Reading: With regard to that the answer is to be found in what happened in a particular instance with which we are all familiar. I need not refer to it in detail. We know what happened with regard to the steel industry and what was done there for that very reason.

Pandit M. M. Malaviya: We did not exclude British firms in India from the benefit of that.

Lord Reading: May I say that I am very conscious of that because naturally I had some hand in it, at any rate in assenting? There never was any question of it. I do not think there was any idea of merely confining it to Indian enterprises—that is to enterprises carried on by Indians as distinct from British.

Pandit M. M. Malaviya: That is not the point. In your definition a Britisher carrying on trade in India while he resides in this country would be included and if no encouragement or protection could be given to an Indian industry which might be to the disadvantage of a business concern carrying on business with India and residing here then we are not free to protect our own industries and to develop them.

Lord Reading: I am pointing out that that was done when a case arose when there was an industry in India which could not compete as it was thought with some foreign countries including this country. Then certain measures were introduced for the purpose. That I think is the answer and there I must leave it. I think myself that that is the way in which obviously it can be met. All I desire to do is to deal with this matter of general principle. If one begins to discuss specific cases it would take a very long time. I have drawn attention to what I conceive to be a grave danger of rather loose interpretation of the words " unfair competition ". I think that that has to be provided against.

Now the question that remains for me to deal with—so far as I am aware the only question—is the method by which those rights are to be secured. I am rather inclined to Mr. Jayakar's view. I would prefer if we could get it, a convention by agreement. If we could get a convention by agreement it would be better but I should object strongly to a convention which had to be passed by the new Legislative Council or Assembly after the constitution had been granted. To my mind it is essential that this should form part of the constitution. It is from our British point of view vital to the constitution; and may I just remind

you, when you are stipulating or suggesting that any question of this kind must be dealt with by the Legislature there, that the constitution has to be passed by the Houses of Parliament here? And I do not myself envy the position of the Minister, whoever he may be or to whatever party he may belong, if by that time there are any parties left, if by that time we have not all agreed. I still repeat what I was saying: in view of what has happened and that we have been working on this question together, I still say, if there are parties left on this question, which I do not believe, then the Minister, who would go to Parliament and tell them that in the constitution he is curtailing the rights which hitherto British traders have had here or in India, would hardly meet with a very favourable reception, and I do not think it would be a very ingratiating way of introducing this new constitution which, we all so ardently hope, will really remove the kind of distrust and suspicion which has existed hitherto, and will put us on a different footing, enabling us to work cordially together and in the closest collaboration.

Now, My Lord Chancellor, having said that, may I just refer to the various methods that occur to me of carrying out what is now required? That is the enunciation and enactment of the principle to which reference has been made and which has received complete assent here. The only points between us, as far as I have understood hitherto, are some as it seems to me very very minor questions of exceptions, and as to how you are to frame your legislation so as to enable certain exceptions to be made.

Now, of course, the one method is by adopting a formula such as we have here which perhaps—indeed I may say certainly—would not quite do in its exact form for a Statute, but which does lay down a very definite principle. That is paragraph 14 at page 49. As I have said I would much prefer that the appropriate convention should be made, because it involves and implies by its very term an agreement. We are so near agreement, and, as Sir Purshotamdas Thakurdas has said this morning and as I have understood from outside, almost really at the point of agreement, that I am sorry and shall be sorry still if in the end we do not reach what is a definite agreement, which would then have to be put into shape. But if we have not a convention which can be scheduled to the Statute—which is to my mind the only way of doing it—then it would be necessary to have the clauses in the Act with reference to regulations, or whatever they may be termed, which would have to take the place of the convention, and which again I would put into a schedule of the Act and therefore give it statutory effect. And here I am glad that we are dealing with the subject upon which there is so very little difference of opinion that really, once we have discussed it as we have been doing here, there ought not to be any real difficulty.

Then further I would put under the Statute, as we have already said again and again, the power to the Governor-General, not only the power but the obligation to protect minorities. Whether

the minorities are Muhammadans, Sikhs, Depressed Classes or Europeans, we have always stipulated, and as I have always understood it has been accepted by this Conference, that there should be that power not only entrusted to the Viceroy but exercised vigilantly by him. Now, in that way he would have the power of intervening if there was any oppression of the Europeans by discriminatory legislation. He could, of course, interfere and either not give his assent or reserve the assent for the signification of His Majesty's pleasure. That is another way of doing it—that is to say, it is an additional protection which would be given.

I think I have now dealt in substance with the various questions that have been brought forward. I might also refer to one thing to which I do attribute importance. There is also the recourse to the Federal Supreme Court, which could be resorted to wherever any subject thought that he had a right of complaint.

That, My Lord Chancellor, shows what the powers are that would be left; and an additional thing that I mention, and only mention because I prefer myself to find all the powers and obligations on the Governor-General in this respect in the Statute, is that it may be necessary in the Letters of Instruction either to the Governor or to the Governor-General to make reference to them. Those are matters which will, of course, have to be considered by those who will be responsible for drafting the Act.

I have not referred in any way to the banks or insurance companies, for the reason that I think all that I want to say is covered by the general observations I made earlier in reference to unfair competition and the distinction that I drew between a large company and a small company that is trying to compete with it. I think you have to be careful. The last thing that we want to get into the minds of persons in this country or in yours is that by means of anything that may be done here it would be possible, if anybody ever thought it desirable, to act inequitably to the British concerns that have instituted themselves in India by giving these advantages so as to make smaller Indian concerns able to compete where perhaps they may not now be able to compete because of the special advantages that the British concern has from long association. But I do not want to repeat that. It covers all the matters that were referred to about the insurance companies and the banks and exchange banks, and I hope that we shall be able to arrive in this way at a conclusion which will be satisfactory to all of us; and certainly nothing is to me more satisfactory than that it should be established, as it has been quite clear from our discussion here, that there is no desire to discriminate, and that, indeed, those Indians who have spoken and many of those who have not spoken this time but with whom I had discussions last year, set out with the idea that they want to deal fairly and justly with both British and Indians, making no distinction, and the point on which I want to lay stress is that just as we here throw everything open—right of entry, right of trading and all other advantages—so we claim exactly the same

thing in India for the British subject, and so, as I am glad to see from all the various documents that have been referred to and from the observations made, no question can arise between us as to the right of the British subject to trade in India in the circumstances that have been described.

Lord Chancellor, no doubt it is not easy to arrive at the exact solution in point of drafting in a Bill, but I do think that, with the goodwill that has been established here and with the consensus of opinion that exists amongst us, there ought to be no difficulty in arriving at conclusions which will receive the general assent of this Conference, which will commend themselves to the Indian people when they understand them, and which will stand at any rate as an embodiment of what is just and fair, as much desired by the Indian community as it is by the British.

Chairman: I think we are all very grateful to Lord Reading for what he has said, and, if he will allow me to say so, his unique experience, first of all as Lord Chief Justice of England, then as Viceroy of India, and then as Foreign Secretary, gives to his words a weight which would lead none of us to desire to differ from them unless we were very sure to the contrary. I am sure we are all very grateful to him, having regard to his unique experience and knowledge, for putting his advice before us.

Mr. Jinnah: As perhaps forming a minority of one, will you allow me, Lord Chancellor, to give a personal explanation with regard to what has fallen from Lord Reading? I am speaking for myself, and I do not want my position to be misunderstood by anybody, or deliberately misrepresented, either in this Conference or outside this Conference.

I have never refused to subscribe to the general principle that the British interest in India should be fairly and justly treated, but my difficulty has always been, and is now, with regard to the exceptions which are not yet specified or formulated. My difficulty has been with regard to the proposed agreement between Great Britain and India to which Lord Reading referred by way of convention before the constitution comes into operation; and, that being my difficulty, I think Lord Reading will at once admit this, that, as he himself said, this is a very vital issue, and you cannot expect any responsible man to give his assent to a formula which is so vague unless it is thoroughly crystallised.

That is the reason why I was unable to give my assent to the clause to which we agreed here on the last occasion, and that is the reason why I am unable to give my assent now, although I may be a single individual here, and notwithstanding the rebuke of Lord Reading that it was not expected of me to be reasonable.

Lord Reading: You misunderstood me, Mr. Jinnah; I never meant that at all.

Chairman: I think the *esprit negatif* is a most valuable thing.

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Sir Tej Bahadur Sapru: At the outset of the few observations that I am going to make, perhaps Your Lordship will allow me to express our gratification and sense of obligation to Lord Reading for the very fair and broad-minded manner in which he has dealt with this question this morning. I do not wish to traverse the entire ground which has been covered in the course of the discussion, but there are just a few points which have emerged from the discussion on both sides, and it is with regard to those points that I should like to make a few observations.

Now, My Lord, as one who must take his share of responsibility for the Report of the Nehru Committee, I should like to point out that this Report, and particularly that part of the Report which deals with the question of discrimination, was discussed by the members of that Committee at great length. We had at that time the advantage of the experience and knowledge of the late Pandit Motilal Nehru, and I can tell you that so far as this particular paragraph, paragraph 11, is concerned, it formed the subject of prolonged discussion between him and myself.

It was not by mere accident that we indulged in that language. It was the result of a very deliberate and prolonged discussion, that we recorded our conviction which is contained in this sentence on page 11:—

> " It is inconceivable that there can be any discriminating legislation against any community doing business lawfully in India. European commerce, like Indian commerce, has had to bear in the past, and will have to bear in the future, the vicissitudes inseparable from commercial undertakings on a large scale and no government in the West or anywhere else has been able effectively to provide a permanent and stable solution for conflicts between Capital and Labour. If, however, there are any special interests of European commerce which require special treatment in future, it is only fair that in regard to the protection of those interests, Europeans should formulate their proposals and we have no doubt that they will receive proper consideration from those who are anxious for a peaceful solution of the political problem."

Your Lordship will observe that having laid down the general principle about discrimination in the sentence I have read we invited an opinion from European commerce in India. One line of criticism taken at that time was that although the sentiment contained in this sentence was perfectly reasonable yet they would like to have it reduced to a more concrete proposition. It was in pursuance of that desire expressed by European trade and commerce that we then met at an All Parties Conference at Lucknow and the definition read by Lord Reading this morning was incorporated. I may say that while the paragraph which I have alredy read out was written by me the definition which I am going to read was drafted by the late Pandit Motilal Nehru:—

> " The word ' citizen ' wherever it occurs in this constitution means every person . . . . . ; (*c*) or who, being

a subject of the Crown, carries on business or resides in the territories of the Commonwealth; or (*d*) who is naturalised in the Commonwealth under the law in force for the time being."

That was really introduced to meet the point of view of British commerce. After that there was some criticism again and this criticism came not only from the side of European commerce but from the side of Indian commerce. Accordingly a small sub-Committee was appointed and this definition of a citizen was still further modified. Lord Reading has not referred to it probably because it was not in his possession.

Chairman: I am very glad you are going to read it.

Sir Tej Bahadur Sapru: I will read it and perhaps it would be an advantage to read an extract from the speech of Pandit Motilal Nehru.

Chairman: Would you give me the date?

Sir Tej Bahadur Sapru: It is the proceedings of the All Parties National Convention held on December 24th, 1928.

Chairman: I have not got this.

Sir Tej Bahadur Sapru: It says:—

"Clause (3), which runs as follows, was taken up.

3. The word 'citizen' wherever it occurs in this constitution means every person——"

I do not read the rest; it is exactly the same as was read out by Lord Reading. Then:—

"Pandit Motilal Nehru moved that Clause 3 as recommended by the enlarged Committee be adopted. In moving the resolution he said that the clause as it originally stood was printed at page 101 of the main Report. It consisted only of two sub-clauses which now appeared as (*a*) and (*d*). What now appeared as sub-clause (*b*) was added by the Lucknow Conference. Sub-clause (*c*) had been added by the enlarged Committee for the reasons set out at page 27 of the Supplementary Report. This last addition was the necessary consequence of the adoption by the Convention of the resolution on Dominion Status. Unless this clause was adopted there would be no possible means available to the people of Great Britain or of any of her Dominions to become citizens of India. This would be an anomaly and give rise to a serious state of things. While Germans, Italians or other foreigners coming to India would have an opportunity to get naturalised and thereby become citizens of the Commonwealth of India no such means would be available to Britishers or the people coming from the Dominions. The latter were all in law subjects of the Crown and as such the naturalisation laws of the Commonwealth would not be applicable to them. That being so they would be permanently debarred from acquiring rights

of citizenship. This result would be quite inconsistent with the resolution passed by this Convention about the constitutional status of India in the community of nations known as the British Empire. While claiming to be on the same footing as the people of Great Britain and of the Dominions Indians could not in fairness deny to the latter rights and privileges which they themselves claimed."

Now this is not my sentence; this is Pandit Motilal Nehru's sentence.

This was merely a consequential amendment. Of course India enjoyed no such rights at all but they had passed a resolution in favour of Dominion Status and if India wanted equality in other Dominions she would have to concede the same equality to the people of those Dominions. If, however, they did not get the equality they claimed there would be no question of giving equality to others. But as he (the speaker) had stated such equality would come about automatically on their attaining Dominion Status and would not depend on the will or pleasure of anyone. But this would not prevent India from passing special legislation restricting the franchise as other Dominions have done. If India were admitted into this family of the Commonwealth of Nations she would no longer be foreign to those nations and they would not be foreign to her.

Accordingly a sub-Committee was appointed and this sub-Committee met on December 27th, 1928. I was a member of that sub-Committee and there were several members of the Congress on that Committee. This is what has not been read out:—

" For original clause (*c*) substitute the following:—

(*c*) Who being a subject of the Crown (1) ordinarily resides or personally works for gain, within the territories of the Commonwealth at the date of the commencement of this Act or "—

Now this is more important:—

" (2) fulfils the qualifications prescribed by the Parliament for the exercise of the rights of citizenship."

Chairman: That is December 27th, is it?

Sir Tej Bahadur Sapru: Yes, My Lord, that is December 27th.

Sir Akbar Hydari: Which Parliament is it?

Sir Tej Bahadur Sapru: The Indian Parliament:—

" fulfils the qualifications prescribed by the Parliament for the exercise of the rights of citizenship."

My Lord, I am free to confess that so far as this particular clause is concerned there is still room for improvement to cover all the ideas which have been exchanged since yesterday from this side to that side and from that side to this; but it seems to me that there is not very much room for such apprehension as has been expressed in regard to certain matters.

May I invite the attention of Lord Reading to the fact that the explanation added to the original clause 3 does not necessarily mean, cannot mean, was not intended to mean that England would be treated as a foreign country? The controlling words in clause 3 are:—

> "or who being a subject of the Crown carries on business or resides in the territories of the Commonwealth."

Well, if an Englishman comes and carries on business or resides in India, then he cannot be treated as a citizen of a foreign country. Therefore the words "foreign country" used in the explanation were not, in my opinion, intended to apply to England; but it is just possible that exception may be taken to the use of those words on the ground of obscurity, and if that is the exception taken then I, for one, would not object at all to the position being made more clear.

There is only one more remark I will make in this connection. It was never the intention of the authors of this clause that by acquiring citizenship in India an Englishman would lose his own original citizenship in England. That was never our intention. So far as that is concerned, we say to Englishmen trading in India or carrying on business in India that it is only for certain commercial purposes that they will acquire a new citizenship. All the rights belonging to them as citizens of England will continue to belong to them. Their personal laws will apply to them. In fact, it will not even be a case of a change of domicile. It was only to place them on a footing of equality that this definition was introduced; but I am free to admit that there may be room for improvement, and if there is room for improvement I hope that such improvement will not be impossible to achieve. That is all that I would like to say with regard to this.

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(The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.)

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Sir Tej Bahadur Sapru: My Lord, before the Committe adjourned this morning I read out a passage from a speech made by the late Pandit Motilal Nehru. I wish to say one thing, and that very clearly; if there was one man in his generation who was a full blooded nationalist it was Pandit Motilal Nehru. With him nationalism was a burning passion.

Chairman: I am sorry he is not with us to-day.

Sir Tej Bahadur Sapru: He never masqueraded as a nationalist, he was a nationalist; and therefore, when I rely upon the speech of Pandit Motilal Nehru in support of that resolution, I present it to those who criticise last year's formula as the real reason and explanation of why those of us who were present last year decided to accept that formula.

I venture to submit that if that formula is examined in the light of the remarks of the late Pandit Motilal Nehru, which I

quoted this morning, it will be found that the formula which was evolved last year by the joint efforts of Lord Reading and Sir Hubert Carr and several of the Indians, among whom I find was Sir Phiroze Sethna—a man who ought to know everything about business—then there is very little room for criticism that the Indian case regarding commerce and industry was surrendered or given away by weak-kneed representatives. Therefore, I claim that it would be wrong and unjust to disturb an arrangement which was willingly accepted by the Europeans on the one side and the representatives of Indian commerce on the other side. I suggest that we should stand by that formula. While I do stand by that formula I also suggest to my friend, Mr. Benthall, and those whom he represents, to consider whether it would not be wise in their interests to supplement it by a proper and carefully devised definition of citizenship which would give them the same status as Indian-born subjects of His Majesty for the purpose of trade, business and commerce in India. I have also said that the definition of citizenship which we introduced in the Nehru Report was not intended by any means in the slightest degree to encroach upon their personal laws, or upon those rights of citizenship which belong to them as Englishmen by their birth. It may, however, be urged that there is room for improvement in the language and particularly in Clause 2. My submission is that if there is any room for doubt, Clause 2 can be so modified as to show clearly that the qualifications which are to be prescribed by the Indian Parliament must be consistent with and not inconsistent with everything that precedes it. That would put the matter beyond all reasonable doubt. The basic principle of this discussion is that laid down in the introductory part of the Nehru Committee Report and that is that there should be no discrimination whatsoever. It is a principle, the recognition of which has been demanded on the one side and conceded on the other and, indeed, if I may say so, Lord Reading was within his right in saying that on that principle there is no difference at all between one section and the other.

It may be that in the actual application of that principle difficulties may arise, and we know from actual experience that difficulties in regard to discriminatory legislation have arisen in actual practice in federal constitutions. But we also must bear in mind that we are providing in the constitution solutions for those difficulties. If unfair treatment is meted out to the British in India by any legislation, there is first of all the power of veto, and the power of the reservation of Bills for the pleasure of the Crown vested in the Viceroy; then, as Lord Reading has pointed out this morning, any person injuriously affected by any legislation or by any administrative action has got the further remedy of taking the matter to the Supreme Court or to the Federal Court, whichever you like to call it.

While, therefore, both Mr. Jayakar and I hold very strongly that there is no room for discrimination, and while we find support

for that view in the Report of the All-Parties Conference, which was signed by men like Pandit Motilal Nehru and others, we also hold that it is by no means inconsistent with that principle that India should have liberty to encourage, foster and support her own industries. The two principles are by no means exclusive of each other or inconsistent with each other; and I did not understand Mr. Benthall to say that he or those for whom he speaks would not give that liberty to the Indian Legislature or to the Indian Government of the future; the liberty to encourage, foster and support Indian industry, any national industry in which the Government of India or the people of India may in future be interested.

Lord Reading was pleased to refer to the case of unfair competition in industry. Speaking before Lord Reading and before Your Lordship, I need scarcely say that cases of unfair competition and the rights to which they give rise are by no means unknown to English law. Indeed, our notions of such cases are derived more from English reports than from Indian reports; when Lord Reading was speaking of that this morning I was reminded of a very famous case in which Lord Reading in his younger days as leader of the Bar appeared before the House of Lords and raised a celebrated argument in regard to what is unfair and what is not unfair competition. Cases of that character have occasionally risen in India during my own experience, and as trade and industry develop they are bound to arise in future. The remedy for the private individual will lie in the enforcement of legal rights in Courts of Law. Lord Reading also pointed out that if there is any calculated attack on any particular right by reason of discriminatory legislation, the proper remedy lies in introducing proper legislation. Therefore, so far as the question of unfair competition is concerned, I should not like that to be confused with the principle of discrimination.

Now, My Lord, I will not say anything more with regard to this subject. There was one other subject which was referred to by Mr. Benthall in his speech. That was that he demanded two further guarantees: first of all, he demanded that the sanctity of contract should be observed; secondly, he demanded that there should be a guarantee for the rights of property. Now here again I feel myself fortified by the Report of the Nehru Committee. I will invite your attention to the Supplementary Report of the Committee, which sums up the fundamental rights which were adopted at that time by the Conference that met at Lucknow, and Clause 4 (2) lays down as follows on page 32:—

> "No person shall be deprived of his liberty, nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law."

Then comes another clause which is in italics there:—

> "All titles to private and personal property lawfully acquired and enjoyed at the establishment of the Commonwealth are hereby guaranteed."

Now, guarantees like that with regard to property have been given in some of the most advanced post-war constitutions, and I will only venture to say this much, that this portion of clause 4 (2), which is in italics, was introduced after a heated discussion at Lucknow, because there were certain members of that Conference who did not want any guarantee of that character to be given. That Conference was attended by leading Taluqdars and Zamindars of Oudh, who came and saw me and Pandit Motilal Nehru and others, and demanded that their rights of property should be guaranteed, and said that they would feel very unsafe in the present circumstances of India if those guarantees were not given; and knowing as I do what sort of wild cries have sometimes been raised on public platforms I think that they were justified in demanding that such a guarantee should be given. I therefore ask Your Lordship to accept not the rash advice of Mr. Benthall and myself but the clause which was accepted by a body of full-blooded nationalists in Lucknow, and I therefore ask that this clause should be accepted:—

> "All titles to private and personal property lawfully acquired and enjoyed at the establishment of the Commonwealth are hereby guaranteed."

Similarly, Your Lordship will find, as an offset against this, that when the claim of the tenants was put forward the Conference provided, in clause 4, in the last sub-clause but two, numbered (xvii):—

> "Parliament shall make suitable laws for the maintenance of health and fitness for work of all citizens, securing of a living wage for every worker, the protection of motherhood, welfare of children, and the economic consequences of old age, infirmity and unemployment."

Then come the italicised words:—

> "and Parliament shall also make laws to ensure fair rent and fixity and permanence of tenure to agricultural tenants."

I also stand by that. It is not that the Nehru Report espoused the cause merely of landlords and property owners, but it also took deliberately into consideration this particular clause, which was introduced there at the instance of some of the younger representatives of nationalism.

Chairman: Do you suggest that that particular clause should find its way into a federal constitution?

Sir Tej Bahadur Sapru: Which clause, My Lord?

Chairman: The one you have just read out—"Parliament shall make suitable laws for the maintenance of health", and so on.

Sir Tej Bahadur Sapru: No, it will have to be modified, because that will have to be worked out by the Provincial Councils. The question of the rent and the fixity and permanency of tenure will not be within the jurisdiction of the Federal Government or

of the Federal Legislature. That will be a matter which will appertain to the Provincial Councils.

Chairman: Of course, you heard what Mr. Joshi was saying yesterday about that. What is your view about that?

Sir Tej Bahadur Sapru: If Your Lordship would like me to say something with regard to that I will do so.

Chairman: Yes, it is a very convenient point, because you were just reading it.

Sir Tej Bahadur Sapru: With regard to that, may I point out to Your Lordship here that the fair rent and fixity and permanency of tenure here has no reference to Labour such as was referred to by Mr. Joshi? It has reference to the agricultural population in India; and it is for that reason that I say that the enforcement of this rule, will be rather within the jurisdiction of the Local Councils, the Provincial Councils, than within the jurisdiction of the Federal Government.

With regard to Mr. Joshi's point, may I deal with that at this stage?

Chairman: Yes, I should be much obliged to you if you would.

Sir Tej Bahadur Sapru: So far as Mr. Joshi's point is concerned, I entirely agree with him that Labour legislation should be within the jurisdiction of the Federal Government and of the Federal Legislature, not merely because it is legislation of a humanitarian character and legislation which will deal with social welfare and things of that kind, but because at times it will be necessary for the Government of India to implement international obligations into which it will enter as it has entered into them in the past.

Further, it is desirable that there should be some uniformity of legislation and uniformity of standards in regard to those material requirements which Mr. Joshi had in view for the purposes of Labour. So far as all that is concerned, I am entirely in agreement with Mr. Joshi. I do not want to go into the details of the various questions raised by Mr. Joshi; I have sufficient confidence that the Legislature of the future will deal with the question of Labour in a spirit of sympathy, fairness and equity, as indeed it should deal with it, and therefore I do not want to dwell on that point any further.

There is only one other thing I want to say, and it is this. We are here for the purpose of settling as many points of difference between one section of the Conference and another as we can. There are some very big questions which have been engaging our attention, but of these the question which has been raised by Mr. Benthall is by no means the least. Personally, I thoroughly appreciate, and I know that many of us do appreciate, the spirit in which Mr. Benthall has raised that question; and subject, of course, to the right of India to develop her own industries, I do welcome the proposals made by Mr. Benthall generally, without

committing myself to every single detail of those proposals, and I do say that the time really has come when we should remove all those differences and come to a settlement with our European colleagues in India so far as this matter is concerned.

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Sir Phiroze Sethna: Lord Chancellor, Mr. Benthall commenced his speech yesterday with the observation that the subject with which we are dealing is supposed to be a very controversial one. If it is so it is our European friends who have made it a controversial question, because of the demand they have made, which demand has been backed up in the several representations made by the Associated Chambers of Commerce, to the effect that certain statutory safeguards or guarantees should be provided in the new constitution against discriminatory legislation.

The best answer to that from the Indian point of view is to be found in just one sentence in the rejoinder published in October 1929, by the Federation of Indian Chambers of Commerce and Industry. That sentence reads as follows:—

> "There can be no self-government in India if she is to be denied the power to devise and follow a national economic policy, including the right, if her interests require it, of making economic discrimination against non-national interests."

We take our stand on this.

The European community, when they appeared before the Simon Commission, put forward the same demand. It might have been expected that, since the Simon Commission was composed exclusively of Britishers they would naturally sypathise with European mercantile interests in the country and the Commission's Report would have something to say to help them in the matter of this demand. Instead, all that the Report has said is as follows:—

> "The statutory provision would therefore have to be drawn so widely as to be little more than a statement of abstract principle affording no precise guidance to Courts."

Mr. Benthall: May I ask a question? Did not that refer to all minorities?

Sir Phiroze Sethna: I am not quite sure.

Mr. Benthall observes that Indians must not forget the great advantages conferred upon the country by reason of the fact that Britishers have sunk millions of pounds in the country and by reason also of their skill and their great organising powers in working up industries, etc. I, for one, do not question that statement for one moment. I entirely endorse it, and am ready to admit that contact with the British has helped Indians to a great extent. But on the other hand I affirm with equal emphasis that the sinking of so many millions has certainly done untold good to

England and Englishmen. Therefore the advantage is on both sides. It has not been ascertained precisely what amount has been sunk by the Britishers in the country. One writer, however, recently stated that there are eight hundred and twenty-one companies with a paid-up capital of £528,000,000 registered outside India which are working in India. It is but natural, therefore, that the European community should require some assurance that their interests are not to be jeopardised in a self-governing India, but I claim that the fears they entertain are not justified. India to-day, we have always held, and rightly so, is a poor country. We have not so many millions to sink in other countries. But poor as India is, Indian capitalists have sunk some crores at least in Burma, and I do not think that if Burma is separated from India, as is threatened, the Indians will claim safeguards in the new constitution of Burma as our European friends are claiming in the proposed new constitution of India.

Mr. Benthall also observed that a large volume of public opinion proclaims that if political power is transferred to India, Indian interests will make use of it to the disadvantage of Europeans. I cannot understand why they should entertain such misgivings unless it be that they are afraid that because in the past Europeans have enjoyed considerable monopolies or privileges in commercial matters that perhaps Indians will try to retaliate. Reference was made by myself and others when we spoke at the Plenary Session last year to several instances of this kind. Mr. Jayakar referred to one yesterday. Sir Purshotamdas hinted at others this morning. I will not go back to past history, but I would like to draw the attention of this Committee to an event which took place quite recently —within the last few months, and even while the Conference has been sitting. Bengal is a maritime Province and a Province in which there are river systems and water-ways. The sea and these water-ways are largely used for passenger and goods traffic. There are what are known as river steamer lines which are mostly run by European companies. The two principal ones are known as the Indian General Navigation and Railway Company, Limited, and the River Steam Navigation Company, Limited. They were previously run by different European agencies; they are now run by one and the same European management. These companies have done so very well that they have always tried to stifle opposition and have succeeded in doing so by cutting down rates. Lord Reading this morning observed that if there is unfair competition we would be justified in introducing legislation. Legislation of this nature was brought forward in the Assembly by a very energetic member of that House, Mr. K. C. Neogy, five or six years ago. He proposed a Bill which is known as the Inland Steam Vessels Bill. Its object was that Government, with the help of an advisory Committee, should from year to year fix both minimum and maximum rates; minimum rates so that the stronger companies would not quote lower rates than the minimum, and therefore enable newly formed smaller Indian companies to exist; maximum rates

so that the passenger public might not be inconvenienced, if there was a combine, by being forced to pay much higher rates than would be necessary. This Bill was passed about two years ago, but the Government did not put it into operation until the beginning of this year. They did not commence it earlier for the reason that they thought it would be wise to allow these steamer companies to put their houses in order. As I have said, the Act came into force at the beginning of this year; but even before it came into operation these stronger companies tried to work in places, in narrow creeks, where they had never sent their boats previously, in order that when the Act was in operation they might be prepared and better able to compete with the smaller Indian companies that may be newly formed to work in these creeks. One such small company was formed and is known as the Pioneer Motor Boat Company. At the beginning of this year it met with opposition by the cutting of rates by the European companies. Under the Act which I have mentioned it complained to the Government of India. The Government of India, as provided in the Act, referred the complaint to a Committee. That Committee consisted of three gentlemen. One was Sir Narasinha Sharma, at one time a member of the Viceroy's Executive Council. The two other members were both Englishmen. One was Mr. Parsons, a member of the Railway Rates Advisory Committee, and the other Mr. A. Cassels, Commissioner, Dacca Division. The majority were Europeans and officials, but they had no difficulty in coming to the conclusion that the intention of the Joint Inland Steamer Company to cause the Pioneer Motor Boat Company, Dacca, to cease from carrying passengers on the line in question had been disclosed. So that even after the passing of this Act, these strong companies resorted to measures which by this Committee were regarded as improper, and Government have taken action on them.

Mr. Benthall: Is not that a justification for the power of legislation to which I have referred?

Sir Phiroze Sethna: Is there a justification for these companies, in spite of the existence of this Act, going behind it in the manner this Committee has disclosed that they have done?

Mr. Benthall: But that shows the power of the Government to disclose that, and, if that is being done, to protect the smaller companies.

Sir Phiroze Sethna: But that is being done every day. It is for that reason that I put forward this instance, and I will now put forward others.

To give you another instance, My Lord, some years ago a railway company, which was then company-managed and not State-mangaed, invited tenders for sleepers. The tender of an Indian firm was the lowest; their timber was supposed to be as good as that of any other tenderer, and yet the tender was given to an Australian firm. Questions were asked, but Government said

because it was a company-managed railway they had no control, and consequently nothing could be done.

I will just give one more instance. This House is aware of the concessions given by the Lee Commission in the case of European officers of the different Services. When they made those concessions to the Europeans, at the same time they accelerated the pace of Indianisation in the different Services. When the officers in the Imperial Services were given these concessions the European officers on the State Railways asked for the same. They were given them. Then followed a similar appeal from the European officers of the company-managed railways. That likewise was agreed to. When it came to the turn of the Indians to ask for the other recommendation made by the Lee Commission—namely, to accelerate the pace of Indianisation—of course, the State railways did so, but there was considerable opposition from the company-managed railways, and if I am not wrong there is still one company-managed railway which is doing nothing in the matter of the accelerated pace of Indianisation. These incidents happen every day, and even to-day, but we do hope that they will not happen in the future.

Sir Purshotamdas Thakurdas this morning made reference to the circular issued by the Government of Bombay. The Secretary of State for India, Sir Samuel Hoare, from the remark that fell from him, evidently questioned the existence of that circular. I am sorry that Sir Samuel Hoare is not present now.

Chairman: Well, if you think you could come back to that part of your speech in a minute or two, he is only out of the room for a short while, and I should like him to hear it; but if it embarrasses you, pray continue. He will certainly be back in a few minutes.

Sir Phiroze Sethna: He will be able to refer to my speech. He will not be able to contradict and, for this reason, I ask permission to quote from a speech which I made in the Plenary Session on the 20th November of last year and the passage is at page 163 of the proceedings of the Conference.

Chairman: I am sure he would not contradict that.

Sir Phiroze Sethna: I only quote this to show that I am not speaking without the book.

Chairman: I am sure you are not. Perhaps you will just read it, then.

Sir Phiroze Sethna: What I said was as follows:

> "Let me refer to an instance which occurred in India less than six months ago. I do not know whether it was of their own instance, or whether it was with the permission and knowledge of the Government of India, that the Government of Bombay issued a circular from the Central Government Press of Bombay, which they broadcasted by the thousand, in which, in order to meet the boycott movement,

> they deprecated every Indian commercial enterprise. I will quote but one sentence in regard to banking. It says:— 'British banking is the mainstay of our banking system in India. It provides wide facilities and the strongest security. Why should people in this country ignore these secure concerns in favour of much less stable ones?' "

Sir Samuel Hoare wanted a copy of that circular. I am sorry that I have not it with me at the moment, but I have carefully preserved it, and I could, if desired, send it to him after I return to India.

Chairman: But I am sure that Sir Samuel Hoare would accept it from you. He will not want a copy.

Sir Phiroze Sethna: Thank you, My Lord. Then I will not pursue the matter any further.

Now, My Lord, Mr. Benthall observed—I am quoting his words —" What we ask we concede. The Indian subject of His Majesty or of a State can come to this country and, as a British subject, the law excludes him from nothing that is lawful to a European British subject." Lord Reading also put forward that same view this morning. All this is very right in theory, My Lord, but I should like to ask these gentlemen if this is really so in practice. Sir Purshotamdas Thakurdas mentioned the instance of the Baltic Exchange, where only two Indian firms have succeeded in becoming members, and not without very considerable trouble lasting for several years. Then there are the London Commercial Rooms, which are divided into several sections, and one section of which is known as the London Jute Association. In that Association so far only one Indian firm, a prominent member of which is at the moment a member of this Conference, has managed to secure membership. I know there are two others wanting to get in, but, though there is nothing in the rules to exclude Indians, these Indian gentlemen find great difficulty in getting anyone either to propose or to second them. Therefore I contend that while this may be sound in theory, in actual practice it does not exist.

Mr. Benthall quoted from Chapter XV of the Report of the Fiscal Commission to the effect that " the presence of foreign money is not considered detrimental to India's interests," and he also quoted from the Report of the External Capital Committee, which Committee was appointed some years later, to the effect that " the inflow of external capital is not only not objectionable in itself, but is a valuable factor in assisting the economic development of a country and in increasing its wealth and employment." I entirely agree with these views expressed in both Committees.

So far back as 1916, when Sir William Clarke was Commerce Member of the Government of India, in the course of a speech supporting the appointment of the Industrial Commission he said: " The building up of industries where the capital, control and management should be in the hands of Indians is the special object

we all have in view." If that was the object in 1916, that object continues to exist to-day; there is greater need for it now, fifteen years later.

The External Capital Committee recommended that in future companies which received help from Government must have their capital subscribed in rupees, a portion of the capital must be offered to Indians, a percentage of the directors must be Indians, and so on. I understood Lord Reading to favour those proposals in the course of his remarks this morning, but I think Mr. Benthall does not entirely agree in regard to offering any percentage of the capital to Indian investors. I certainly think the Government of India would be justified, for the sake of the Indian investor, in asking the promoters of such companies to offer a fair percentage of the capital to Indians, but I quite realise that what is sometimes asked for by my Indian friends is both impossible and unworkable, namely that the percentage, say 50 per cent., should in the career of the company be for all time a fixed one. That, as I say, is absolutely unworkable and is not in the interests of the concern itself nor in the interests of the investor, because if you held this capital in water-tight compartments for Indians and for Britishers, neither of them would have a fair chance of selling their holdings, and the company would not do as well as it otherwise would.

But I will certainly make this recommendation that any European company starting with rupee capital in India in the manner suggested might be asked to offer in the first instance 50 per cent. of its capital to Indians. If they take it, well and good. If they do not then it will be perfectly open to those Europeans to offer it to whomsoever else they like. If Indian investors invest to the extent of 50 per cent. in the company, it stands to reason that if the company is successful they would try to secure more shares in the concern. But to hold them in water-tight compartments is by no means feasible and ought to be deprecated.

Again, My Lord, we have always held, and rightly so, that India has not enough money. We must admit that at the present moment perhaps we do not equal our European friends in the matter of organisation, in skill and also in the matter of technical education. Therefore I, for one, hold that it is best to co-operate with them and to see that they come even in larger numbers than at present, with such reservations as I have already explained. There may be instances where some European firms control machinery which we could not get elsewhere and it would be suicidal on the part of India to prevent such Europeans doing business in India—again I repeat with such reservations in regard to capital, etc., as I have stated.

Much has been said in regard to the amended clause 14 in the Minorities Report and much discussion has hung around the word "generally." I may be permitted to mention that it was at my instance that my Indian colleagues on that sub-Committee requested

our European friends on the same sub-Committee to include the word "generally." The word "generally" was inserted before the word "agreed," thus indicating that while "generally" there should be no discrimination, it was understood by implication that in particular cases we considered ourselves free to discriminate. The placing of the word "generally" immediately before the word "agreed" has probably misled some into thinking that it related to the word "agreed" and not, as we intended to the words "there shall be no discrimination." There is no doubt about this, and I think my European friends also hold the same view.

Indians have no desire whatever to injure the legitimate interests of the European commercial community. On the contrary, provided there is a satisfactory political settlement Indians will welcome European capital and skill in the development of India's resources. I think it is a mistake to treat this question as one of racial or commercial discrimination. There is no discrimination. There is only a matter of equalisation. There is common ground that in the past Europeans have had far wider scope than Indian merchants. Therefore if in the future Government of India subsidies are given and help extended to Indian organisations exception should not be taken to the same. Until we are able to consolidate our internal wealth and provide for its utilisation for the country's economic development we recognise the value of external capital as a factor in assisting that development. At the same time our policy must be directed towards stimulating the flow of capital from internal sources. As this must be our first concern we must be able to take any measures we consider desirable or necessary to foster and give preference to Indian investors. If that is discrimination between the British commercial community and Indian-born subjects then we must be free to take such action as is contemplated in the Report of the External Capital Committee and I would mention that the European members of that Committee were Sir Basil Blackett, then Finance Member, and Sir Charles Innes, the then Commerce Member, who is now Governor of Burma, who were both officials, while Sir John Bell and Sir Walter Wilson were the two non-official European members. We must claim the right to discriminate in the interests of our own people when we find it is in India's interest to do so. That does not mean to say we have any desire to discriminate against Europeans or British traders in India.

All it means is that we cannot forego the right, unqualified in any way, to shape our economic policy in the interests of Indian nationals. If at any time we do so, it can only be in very exceptional cases; and if our European friends claim that this power should not rest with the Legislature and they desire that they may have the right to appeal to another tribunal, such as the Supreme Court or the Federal Court, I do not think any sensible Indian would oppose such an application.

Therefore, while perfectly willing to assure the British commercial community in India, and also for that matter all other non-Indian communities, that we have no intention of injuring their legitimate interests, we cannot possibly accept the principle that the autonomy of a self-governing India should in the matter of commercial policy be in any way inferior to that of other free people, whether they be free as an independent nation or a self-governing Dominion.

In the course of the discussion which preceded the agreement on the amended clause 14 the argument was advanced that no discrimination could be permitted between one British subject and another in India; but what is the position, My Lord, in regard to Indians in the Dominions and certain British Colonies? There there is discrimination galore. How unreal is this British citizenship if such discrimination is permitted in so many parts of the Empire. Also, while on the question of citizenship, if an Indian citizenship were created as suggested in the amended Nehru Report, and supposing the Indian States for some reason refused to come into it, you would have a position where it would be legitimate for the Federal Government to discriminate against an Indian in Indian India, but not against an Englishman in Bombay or Calcutta. Citizenship may be an ultimate solution, but until that time comes India cannot permit any limitation of her power as an autonomous people to discriminate in favour of what she regards as Indian interests.

No assurance, however carefully worded, no statutory safeguard, will be of any use unless behind it there is the good will of the Indian people. The recent boycott provided an important example of discrimination. There might be a statutory or other safeguard for the British mercantile community against discrimination, but what use would that be if circumstances such as unfortunately obtained last year and earlier this year were repeated at any time in the future?

Again, My Lord, my European friends will admit that whatever safeguards are introduced will be only temporary, that is to say for the transition period. If, therefore, it is proposed to introduce safeguards which will be regarded as irksome by Indians, then when there is complete self-government in India the Legislature will try to get rid of them much quicker; but, what is more, the tension between the two communities will remain as severe as unfortunately it has been for the last two years. There can only be one safeguard against discrimination for all times; that safeguard is good will and co-operation. If that has been absent in the past it is in some measure due perhaps to the position of privilege enjoyed by our European friends in India. Mr. Gandhi has said that he wishes them to cease to be rulers and to become friends. He further said that as friends they cannot claim privileges. He adds that one gives guarantees to enemies, not to friends. The future of the European community in India really

depends on the extent to which this community is prepared to identify itself with India's interests, and to the extent to which Europeans in India are prepared to regard themselves as partners. This we hope will be brought about as the result of the present Conference.

What England needs most is the maintenance and the continuance of her trade with India which is her largest market, and this will be sufficiently safeguarded and secured, even in a self-governing India, if our country is now released from the apron strings by which it has been tied for so long to Great Britain.

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Mr. Gandhi: Lord Chancellor and friends, I would like to tender my congratulations to Mr. Benthall on his very temperate statement, and I wish that he could have seen his way not to spoil that admirable statement by importing two sentiments. One sentiment expressed by him was practically that Europeans or Britishers claimed what they are claiming because of their having conferred certain benefits on India. I wish that he could have omitted this opinion, but having expressed it there should have been no surprise expressed, as was expressed by Lord Reading, that there was a courteous retort from Sir Purshotamdas Thakurdas, and now, as we have heard, reinforced by Sir Phiroze Sethna. I wish also that he could have omitted the threat that has been used in that statement on behalf of the great corporation that he represents. He said that the European support to the national demand was conditional upon Indian nationalists accepting the demands of the European community expressed by Mr. Benthall, as also, not stated in this statement, but we had it, unfortunately, a few days ago, the separatist tendency expressed in the demand for a separate electorate, and their joining that separatist combination about which it was my painful position to speak the other day. I have endeavoured to study the resolution passed at the last Conference. I want to read that resolution again, although you are familiar with it, because I shall want to say a few things in connection with that resolution:—

> "At the instance of the British commercial community the principle was generally agreed that there should be no discrimination between the rights of the British commercial community, firms and companies trading in India and the rights of Indian-born subjects."

The rest I need not read.

I am extremely sorry, in spite of the great regard and respect I entertain for Sir Tej Bahadur Sapru and Mr. Jayakar, to have to dissent from this sweeping resolution. I was therefore delighted yesterday when Sir Tej Bahadur Sapru readily admitted that it was vague and that it was susceptible of improvement. You will see the general character of this resolution if you will carefully study it. There is to be no discrimination between the rights

of the British mercantile community, firms and companies trading in India and the rights of Indian-born subjects. If I have interpreted this correctly, I think that it is a terrific thing, and I, for one, could not possibly commit the Congress to a resolution of this character, much less commit the future Government of India.

There is here no qualification whatsoever. The rights of the British commercial community are to stand on exactly the same footing as those of Indian-born subjects. Therefore it is not as if there is merely not to be any racial discrimination, or anything of that kind, but here the British commercial community are to enjoy absolutely the same rights as Indian-born subjects. I want to state, with all the emphasis that I can command, that I could not even endorse the formula that the rights of all Indian-born subjects themselves could even be guaranteed as equal. I shall show you the reason presently.

I think that you will readily grant that the future Government of India would be constantly obliged (to use the admirable phrase used just now by Sir Phiroze Sethna) in order to equalise conditions to do what the existing Government has neglected to do, namely, continually to discriminate in favour of the famishing Indians against those who have been blest by nature or by the Government themselves with riches and other privileges. It will be necessary for the future Government, perhaps, to provide quarters free for Labour, and the monied men of India might say "If you provide quarters for them you should give corresponding grants to us, although we do not require quarters of that nature." It would undoubtedly be discrimination in favour of poor people, and the monied men might then say, according to this formula, that it would be discrimination against them.

I therefore venture to suggest that this sweeping formula cannot possibly be accepted by us in this Conference when we are trying to assist His Majesty's Government—in so far as they will accept our assistance—in shaping the future constitution of India.

But having said this I want to associate myself completely with the British merchants and European houses in their legitimate demand that there should be no racial discrimination. I, who had to fight the great South African Government for over 20 years in order to resist their colour bar and their discriminating legislation directed against Indians as such, could be no party to discrimination of that character against the British friends who are at present in India or who may in future seek entry. I speak on behalf of the Congress also. The Congress too holds the same view.

Therefore instead of this I would suggest a formula somewhat on these lines, a formula for which I had the pleasure and privilege of fighting General Smuts for a number of years. It may be capable of improvement but I simply suggest this for the consideration of this Committee and especially for the consideration of European friends. "No disqualification not suffered by Indian-born citizens

of the State shall be imposed upon any persons lawfully residing in or entering India merely "—I emphasise the word " merely " —" on the ground of race, colour or religion." I think that this is an all-satisfying formula. No Government could possibly go beyond this. I want to deal briefly with the implications of this, and the implications of this, are, I am sorry to say different from the deductions that Lord Reading drew or sought to draw from last year's formula. There would be no discrimination in this formula against a single Britisher or for that matter against a single European as such. I propose here to draw no distinction whatever between Britishers or other Europeans or Americans or Japanese. I would not copy the model of the British Colonies or the British Dominions which have in my humble opinion disfigured their Statute Books by importing legislation essentially based upon distinctions of colour and race.

India free, I would love to think, would give a different kind of lesson and set a different kind of example to the whole world. I would not wish India to live a life of complete isolation whereby she would live in water-tight compartments and allow nobody to enter her borders or to trade within her borders. But, having said that, I have in my own mind many things that I would have to do—to repeat that expression—in order to equalise conditions. I am afraid that for years to come India would be engaged in passing legislation in order to raise the downtrodden, the fallen, from the mire into which they have been sunk by the capitalists, by the landlords, by the so-called higher classes, and then, subsequently and scientifically, by the British rulers. If we are to lift these people from the mire, then it would be the bounden duty of the National Government of India, in order to set its house in order, continually to give preference to these people and even free them from the burdens under which they are being crushed. And if the landlords, zemindars, monied men and those who are to-day enjoying privileges —I do not care whether they are Europeans or Indians—If they find that they are discriminated against, I shall sympathise with them, but I will not be able to help them, even if I could possibly do so, because I would seek their assistance in that process, and without their assistance it would not be possible to raise these people out of the mire.

Look at the condition, if you will, of the untouchables. The law has to come to their assistance and set apart miles of territory. At the present moment they hold no land; at the present moment they are absolutely living at the mercy of the so-called higher castes, and also, let me say, at the mercy of the State. They can be removed from one quarter to another without complaint and without being able to see the assistance of law. Well, the first act of the Legislature will then be to see that, in order somewhat to equalise conditions, these people are given grants freely.

From whose pockets are these grants to come? Not from the pockets of Heaven. Heaven is not going to drop money for the

sake of the State. They will naturally come from the monied classes, including the Europeans. Will they say that this is discrimination? They will be able to see that this is no discrimination against them because they are Europeans; it will be discrimination against them because they have got money and the others have got no money. It will be, therefore, a battle between the " haves " and the " have-nots "; and if that is what is feared, I am afraid the National Government will not be able to come into being if all those classes hold the pistol at the heads of these dumb millions and say: You shall not have a Government of your own unless you guarantee our possessions and our rights.

I think I have given sufficiently an indication of what the Congress stands for; of the implications of this formula that I have suggested. On no account will they find that there has been discrimination against them because they are English or because they are Europeans or Japanese or any other race. The grounds that will be applicable to them for discrimination will be also the grounds for discrimination against Indian-born citizens, and therefore I have got another formula also, hurriedly drafted because I drafted it here as I was listening to Lord Reading and as I was listening to Sir Tej Bahadur Sapru. The second formula that I have got with me is in connection with existing rights:—

> " No existing interest legitimately acquired, and not being in conflict with the best interests of the nation in general, shall be interfered with except in accordance with the law applicable to such interests."

Here, too, I would explain shortly what I have in mind. I certainly have in mind what you find in the Congress resolution in connection with the taking over by the incoming Government of obligations that are being to-day discharged by the British Government. Just as we claim that these obligations must be examined by an impartial tribunal before they are taken over by us so should existing interests be subject to judicial scrutiny whenever necessary. There is no question, therefore, of repudiation but merely of taking over under examination, under audit. We have, some of us here, some of us who have made a study of the privileges and the monopolies enjoyed by Europeans, but let it not be merely Europeans; there are Indians—I have undoubtedly several Indians in mind—who are to-day in possession of land which has been practically given away to them not for any service rendered to the nation but for some service rendered, I cannot even say to the Government, because I do not think that the Government has benefited, but to some official; and if you tell me that these concessions and these privileges are not to be examined by the State I again tell you that it will be impossible to run the machinery of government on behalf of the " have-nots," on behalf of the dispossessed. Hence you will see here that there is nothing stated in connection with the Europeans. The second formula also is applicable equally to the Europeans as it is applicable to Indians, as it is applicable,

say, to Sir Purshotamdas Thakurdas and Sir Phiroze Sethna. If they have obtained concessions which have been obtained because they did some service to the officials of the day and got some miles of land, well, if I had the possession of the Government, I would quickly dispossess them. I would not consider them because they are Indians, and I would just as readily dispossess Sir Hubert Carr or Mr. Benthall, however admirable they are and however friendly they are to me. They may stand me fifty dinners, but they will not stand in the way of my dispossessing them. The law will be no respecter of persons whatsoever. I give you that assurance. After having received that assurance I am unable to go any further. So that is really what is implied by "legitimately acquired"—that every interest must have been taintless, it must be above suspicion, like Caesar's wife, and therefore we shall expect to examine all these things when they come under the notice of that Government.

Then you have "not being in conflict with the best interests of the nation." I have in mind certain monopolies, legitimately acquired undoubtedly, but which have been brought into being in conflict with the best interests of the nation. Let me give you an illustration which will amuse you somewhat, but which is on neutral ground. Take this white elephant which is called New Delhi. Crores have been spent upon it. Suppose that the future Government comes to the conclusion that this white elephant, seeing that we have got it, ought to be turned to some use. Imagine that in Old Delhi there is a plague or cholera going on, and we want hospitals for the poor people. What are we to do? Do you suppose the National Government will be able to build hospitals, and so on? Nothing of the kind. We will take charge of those buildings and put these plague-stricken people in them and use them as hospitals, because I contend that those buildings are in conflict with the best interests of the nation. They do not represent the millions of India. They may be representative of the monied men who are sitting at the table; they may be representative of His Highness The Nawab Sahib of Bhopal or of Sir Purshotamdas Thakurdas or of Sir Phiroze Sethna or of Sir Tej Bahadur Sapru, but they are not representative of those who lack even anywhere to sleep and have not even a crust of bread to eat. If the National Government comes to the conclusion that that place is unnecessary, no matter what interests are concerned, they will be dispossessed, and they will be dispossessed, I may tell you, without any compensation because if you want this Government to pay compensation it will have to rob Peter to pay Paul, and that would be impossible.

I am trying to humour you in order to present this bitter pill, for it is a bitter pill which has got to be swallowed if a Government as Congress conceives it comes into being. I have no desire to deceive you; I have no desire, in order to take away something from here, to deceive you into the belief that everything will be

quite alright. I want, on behalf of the Congress, to lay all the cards on the table. I want no mental reservation of any description whatsoever; and then, if the Congress position is acceptable, nothing will please me better, but if that position is not acceptable, if to-day I feel I cannot possibly touch your hearts and cannot carry you with me, then the Congress must continue to wander and must continue the process of proselytisation until you are all converted and allow the millions of India to feel that at last they have got a National Government.

Up to now, no one has said a word in connection with two lines which appear at the end of this resolution, namely:—

> "It was agreed that the existing rights of the European community in India in regard to criminal trials should be maintained."

I must confess that I have not been able to study all the implications of it. I am glad to be able to say that for some days I have been engaged in carrying on friendly—absolutely friendly—and private conversations with Sir Hubert Carr, Mr. Benthall, and some friends. I was discussing this very theme with them and I asked them to tell me what these two things meant and they said it was the same thing for the other communities. I have not ascertained what is the meaning of the same thing for the other communities. It means, I suppose, that the other communities also may demand their own jury. This refers to trial by jury. I am afraid I cannot possibly endorse this formula.

Mr. Jinnah: May I correct you, Mr. Gandhi? It refers not only to juries but to the tribunals, the tribunals which will try Europeans and Indians, and there are many other distinctions. It is not merely the jury.

Mr. Gandhi: I did not know that. That is why I said I had not studied it. If there is something more you will pardon my ignorance but I could not possibly be a party to such reservations. I think that a National Government cannot possibly be shut in by these restrictions. All the communities to-day who will be the future Indian nation must start with good will, must start with mutual trust or not at all. If we are told that we cannot possibly have responsible government that will be a state of things one can understand. But we are told there must be all these reservations and safeguards. It would not be liberty and responsible government but it would be all safeguards. Safeguards would eat away the whole of the Government. I was trying this morning to find something analogous and I came to the conclusion that if all these safeguards are to be granted and all the talk here takes concrete shape and we are told that we are to get responsible government it will be almost on a par with the responsibile government that prisoners have in their jails. They too have complete independence immediately the cell door is locked and the jailer goes. The prisoners inside that cell about 10 ft. square or 7 ft. by 3 ft. have complete independence. I do not ask for that kind of complete

independence, with the jailers safeguarding comfortably their own rights.

Therefore I appeal to our European friends that they should withdraw this idea of safeguarding their rights. I venture to suggest that the two formulae that I have put forward should be adopted. You may cut them about in any manner you like. If the wording is not satisfactory by all means suggest some other wording. But outside these formulae of a negative character whereby there is no bar sinister placed against you I venture to say you may not—shall I say dare not—ask for more. So much with reference to existing interests and future trade.

Mr. Jayakar was talking yesterday about key industries and I propose to associate myself entirely with the sentiments that he expressed. I do not think that I need take up your time by talking of what importance Congress attaches to key industries. The Congress conception is that if the key industries are not taken over by the State itself the State will at least have a predominant say in the conduct and administration and development of the key industries.

A poor undeveloped country like India is not to be judged as a highly developed individualist is land like Great Britain may be. What is good for Great Britain to-day is in my opinion in many respects poison for India. India has got to develop her own economics, her own policy, her own method of dealing with her industries and everything else. Therefore, so far as the key industries are concerned, I am afraid that not merely the Britishers but many will feel that they are not having fair play. But I do not know what is the meaning of " fair play " against a State.

And then about coastal trade too, the Congress undoubtedly has the greatest sympathy with the desire to develop national coastal trade; but, if in the Bill about the coastal trade there is any discrimination against Europeans as such, I will join hands with the Europeans and fight that Bill or the proposal which discriminates against Englishmen because they are Englishmen. But there are the vast interests that have come into being. I have travelled fairly frequently up the great riverways of Bengal and I travelled years ago up the Irawaddy. I know something of that trade. By concessions, privileges, favours, whatever you call them, these huge corporations have built up industries, built up companies and built up a trade which does not admit of any opposition whatsoever.

Some of you may have heard of a budding company between Chittagong and Rangoon. The directors of that company, poor struggling Muhammadans, came to me in Rangoon and asked me if I could do anything. My whole heart went out to them, but there was nothing to be done. What could be done? There is the mighty British India Steam Navigation Company simply underselling this budding company and practically taking the passengers without any passage money at all. I could quote instance after instance of that character. Therefore it is not because it is a

British company. If it were an Indian company that had usurped this thing it would be the same. Supposing an Indian company was taking away capital, as to-day we have Indians who instead of investing their capital in India invest their capital or invest their monies outside India. Imagine that there was a huge Indian corporation that was taking away all its profits and investing them in some other parts of the world, fearing that the National Government was not going along a correct policy, and therefore in order to keep their money intact they were taking away that money outside. Go a little step further with me and say that these Indian directors in order to organise in a most scientific, finished and perfect manner brought all the European skill that they could bring there and did not allow these struggling corporations to come into being, I would certainly have something to say and have legislation in order to protect the companies like the Chittagong company.

Some friends could not even float their ships along the Irawaddy. They gave me chapter and verse in order to assure me that it became utterly impossible; they could not get their licences, they could not get the ordinary facilities that one is entitled to. Every one of us knows what money can buy, what prestige can buy, and when such prestige is built up which kills all the saplings, it becomes necessary then to use the expression of Sir John Gorst which he used froty-two years ago—that it then becomes necessary to lop off the tall poppies. Tall poppies ought not to be allowed to crush these saplings. That is really the case on behalf of the coastal trade. It may have been clumsily worded, the Bill. That does not matter, but I think the essence of it is absolutely correct.

About the citizenship, that is the last thing. Well, you have the definition from the Nehru Report. Naturally the Nehru Committee had to consider situations as they arose, and therefore there were several changes rung on the original description; but I would like this Committee to realise that the Nehru Report is—I am sorry to have to say it, but it is so—to-day a back number. Even the late Pandit Motilal Nehru was obliged to say that, not because we wanted to treat that Nehru Report as a back number. The Nehru Report is undoubtedly a compromise between several positions. Though not a member of the Committee I knew exactly what was happening, because I happened at that time to be in India, to be in touch with the members of the Committee, and therefore I know something of the history of that Report and how that Committee also came into being. I am not going to weary you with the details of the history of that Committee, but, as you will see, that Report is based upon the idea that we were to have Dominion Status. Well, the Congress has taken several strides further. The Congress had to forget that Report in connection with the Hindu-Muslim-Sikh formula, as it has been obliged to forget that Report about many other things. Although the Nehru Report is a creation, or the Nehru Committee is in the first instance a creation of the Congress, I am not able, therefore, to say that we will be able

to-day to swear by everything that appears there. Beyond that I do not want just now to go.

The definition of citizen is a terrific job. I could not possibly undertake on the spur of the moment to present, as I understand the Congress mentality of to-day, what will commend itself to the Congress or what will commend itself to me. It is, as I say, a matter on which I would like to confer with Sir Tej Bahadur Sapru and other friends and try to understand what is at the back of their minds, because I must confess that out of this discusion I have not been able to reach the heart of the thing. I have made the Congress position absolutely clear, that we do not want any racial discrimination, but after having cleared that position I am not called upon now to give a summary decision for the opinion of the Congress in connection with the definition of the word "citizen." Therefore I would simply say in connection with the word "citizen" that I reserve my opinion as to the definition entirely for the time being.

Having said this, I want to close with this remark. I do not despair of finding a common formula that would satisfy the European friends. The negotiations in which I was privileged to be a party are, I think, still to continue. If my presence is required I will still attend that little committee meeting.

The idea is to enlarge it and give it a little less informal shape and find out a common basis.

In spite of what I have said, I do not despair of finding a common formula, but having expressed that hope, I would again hark back to the point that, so far as I can understand it, I cannot think of any detailed scheme which could be incorporated in the constitution. What can be incorporated in the constitution is some such formula as this, round which all kinds of rights can arise.

There is no conception here, as you see, of doing anything administratively. I have expressed my own hope in connection with the Federal and Supreme Court. To me the Federal Court is the Supreme Court; it is the final Court of Appeal beyond which there would be no appeal whatsoever; it is my Privy Council and it is the Palladium of Liberty. It is the Court to which every person who is at all aggrieved can go. A great jurist in the Transvaal—and the Transvaal and South Africa generally have undoubtedly produced very great jurists—to whom I used to go for assistance when I was a youngster, once said to me, in regard to a very difficult case, "Although there may be no hope just now, I tell you that I have guided myself by one thing, or else I should not be a lawyer; the law teaches us lawyers that there is absolutely no wrong for which there is no remedy to be found in a Court of law, and if Judges say there is no remedy, then those Judges should be immediately unseated." I say that with all deference to you, Lord Chancellor.

I therefore think that our European friends may rest assured that the future Federal Court will not send them away empty-

handed, as we expect to go away empty-handed if we do not have the favour of the Ministers who are the present advisers of His Majesty. I am still hoping that we shall have their ear and get round their better side, and then we may hope to go away with something substantial in our pockets; but, whether we go away with anything substantial in our pockets or not, I hope that if the Federal Court of my dreams comes into being then the Europeans and everybody—all the minorities—may rest assured that that Court will not fail them, though a puny individual like myself may fail them.

Chairman: We are very much obliged to Mr. Gandhi for that speech. If you will allow me to say so, everybody must be impressed by the earnestness and sincerity with which he advocates his ideals, and I thank him very much indeed. Perhaps he will be good enough to give me those two formulæ.

Sir Tej Bahadur Sapru: I should like to ask Mahatma Gandhi to explain one part of his speech, in regard to which there is some doubt in my mind. Does he propose that the National Government of the future should examine and investigate the title to property of everyone, and if so would it be any title acquired within a certain period of time or not? What is the machinery he proposes to bring into existence for the examination of that title and does he propose to give any compensation at all, or that the National Government should simply expropriate property which according to his view or the view of the majority seemed to have been wrongfully acquired?

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Mr. Gandhi: If you will give me permission I will certainly answer those questions, which are very legitimate questions. I have really given my view. So far as I understand, it is not intended that the administration should do the thing; everything that is done will be above board.

It will be done by legal machinery. All these claims——.

Sir Tej Bahadur Sapru: That is what I want to know. What is that legal machinery to be?

Mr. Gandhi: I have not at the present moment thought of any limitation. I think that there is no limitation running against a wrong.

Sir Tej Bahadur Sapru: Under your National Government therefore no title in India is safe?

Mr. Gandhi: Under our National Government the Court will decide these things, and if there is any undue fear about these things, I think it is possible to satisfy every legitimate doubt. I have no hesitation in saying that generally speaking this is a formula which should be accepted. Where complaints are made that there are illegitimate rights acquired it should be open to the Courts of law to examine those rights. I am not going to say to-day

in taking over the Government that I shall examine no rights whatsoever, no titles that have been acquired.

Chairman: I think each of you will consider most carefully what the other has said and we will consider what both of you have said.

Pandit M. M. Malaviya: After the very exhaustive speech of the Mahatma Gandhi I do not propose to detain the Committee very long. I wish to make a few points quite plain. We are all agreed that there shall be no discrimination against Europeans trading in India and no wrong done to them. They shall be dealt with justly and fairly. On that point there is general agreement.

Chairman: Would you rather continue at our next meeting?

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(*The Committee adjourned at 4-20 p.m.*)

PROCEEDINGS OF THE FIFTIETH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON TUESDAY, 24TH NOVEMBER, 1931, AT 11-0 A.M.

Commercial Discrimination—concluded.

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Mr. Iyengar: Lord Chancellor, I had not intended to intervene in the debate, but a number of points have been raised by Lord Reading's speech which still require clearing up; and though, as I hope, the Right Honourable Mr. Sastri will refer to some of them, there are still some more of them that I think it is well that the Committee should face before coming to an end of the discussion under this head. I should at the outset express my gratification that Lord Reading has now fully realised that both at the time of the Nehru Report and since, there has been no disposition on the British-Indian side to adopt or approve of any principle of racial discrimination. But then His Lordship has asked that we, in framing the constitution, should make provision against possibilities; and it is in defining these possibilities and the means of avoiding them that he has laid down propositions some of which, it seems to me, with all respect, it would be impossible for any self-respecting country establishing a responsible government to accept. He desires that the definition of citizenship should be wider than that discussed last year, so as to confer equality of rights and opportunities with the Indian-born citizens on Britishers temporarily resident in India for the purposes of trade, business or other occupation. He has gone further, and asked for the conferment of such rights on the absentee capitalists, individuals, firms or corporations of Great Britain who send their capital to India for the purposes of profit, and the bigger they are the more they

shall be protected against legislation that may affect their rights or expectations.

Lord Reading: May I just interrupt for one minute? I hope it will not be taken that that summary of what I said is correct.

Mr. Iyengar: That is the impression that I got.

Lord Reading: Well, I cannot argue about it. The words I used are on the record. I never, for example, said that the bigger the corporation the more it was to be protected.

Mr. Iyengar: No; but I believe, My Lord, what was said was that there were very large interests which have been developed by big companies who have instituted themselves in India, and Your Lordship emphasised the importance of giving protection to them.

Now, speaking for myself, I think that while the proposition that protection should be secured by a properly defined law of citizenship is quite sound, I shall not agree that the definition shall make no distinction between the mere sojourner or resident and the citizens Indian-born or citizens domiciled after a defined period of residence. Much less could I agree that the definition should confer all rights of citizenship on absentee firms or corporations whose members will get, in addition to the full rights of their own British citizenship, additional rights of Indian citizenship guaranteed in this country by constitutional enactments. We have been told that the right is claimed on the basis of reciprocity. In so far as any such reciprocity exists by the operation of the existing Statute of naturalisation in England, my claim is that in this respect we and our future Government should be placed on exactly the same footing as other Dominions.

The Imperial Parliament—I speak subject to correction, but on the authority of Professor Keith—possesses the unquestioned right of defining the conditions which make a man a natural-born British subject. Residence in any part of the Empire is equivalent to residence in the United Kingdom as a qualification for admission to British nationality; but, while there is a law of British naturalisation, there are also Colonial laws of Colonial naturalisation, and after the British Nationality and Status of Aliens Act of 1914, naturalisation in the United Kingdom was no longer to confer the status of a British subject in any Dominion, unless that Dominion should adopt by legislation the provisions of that Act, and when it did so it conferred both Dominion and Imperial citizenship rights on those qualified for them.

But, My Lord, as Professor Keith has pointed out, of even greater constitutional importance was the action taken by Canada in defining, within the broader circle of British citizens, the narrower class of Canadian citizens. The term was first adopted for a limited purpose, that of immigration, when it was desired to make clear what persons were so connected with Canada as to be exempt from the provisions of the immigration legislation; but a wider use of it was rendered necessary by the creation of the Permanent Court of International Justice. Under the Statute of that body,

it is impossible for two nationals of one Power to be elected Judges; and as Canada, in virtue of its independent membership of the League of Nations, was also an independent member of the Court, it was necessary to secure that if a Canadian were elected he would not be refused a seat because a British member was elected.

Canadian nationality, therefore, is ascribed by an Act of 1921 to all Canadian citizens as defined in the Immigration Act of 1910, to their wives and to the children of Canadian nationals born out of Canada. Under the Act of 1910 a Canadian citizen is any person born in Canada who has not become an alien, any British subject domiciled for three years in Canada, and any naturalised alien who has Canadian domicile. Analogous provision for the nationality of the Union of South Africa was made by the Act of 1927, while the Irish Free State, by its constitution, conferred citizenship on all persons domiciled in the Free State on the coming into force of the constitution, if born there or in Northern Ireland, or if either parent was born in Ireland, and so on. I do not want to repeat it all.

Mr. Sastri has referred to the injustice and inequity of immigration restrictions on British Indians within the Empire, and the reservation for India of the right to resort to retaliatory measures. I want the principle of this right to extend equally to commercial and industrial matters. Mahatma Gandhi's readiness to consider preferential arrangements in respect of the difficulties of Manchester, for instance, will show that the problem of adjusting our mutual rights, obligations and equities so far as they now exist, is a matter which is not beyond the ability of our representatives to solve on the basis of perfect equality, freedom and goodwill.

But a convention based on an agreement is one thing, and an injunction in perpetuity, so far as the constitution can impose or enforce it, restraining the future Federal Legislature from ever meddling, not only with " existing and accruing rights," to use a phrase which is familiar in India, but with the expectations in investments by business connections, of concerns which have instituted themselves in India, even when national interests or emergencies demand it, is a different thing. It is a restriction of the rights of legislative sovereignty which no self-governing Legislature can accept with due regard to the future of the country, and which no Colonies, even when they have much less than full Dominion Status, accepted or recognised, and which the British Government at all times discouraged its Governors, by despatches and instructions, from seeking to enforce through their reserve powers.

For instance, if I may again quote Professor Keith, the powers of the Colonies in matters of the regulation of civil rights have also received generous acknowledgment by the Imperial Government, even in the very important and delicate set of cases in which Colonial legislation may be deemed to bear with undue severity on persons not resident in the area. From the earliest days of the control of Colonial legislation, it was necessary to insert clauses in

the instructions to the Governors to prevent assent to Bills aimed at non-residents, and this point has been raised infrequently since the grant of responsible government. It is important to note the attitude of the Imperial Government, which has deprecated intervention on this scope. As early as 1874 it adopted the attitude that it would not interfere with Canadian legislation affecting marine telegraphs, despite the allegation of the Anglo-American Company that its rights were being unjustly infringed. In 1898, the whole question of intervention in local matters, even when non-residents were affected, was elaborately dealt with by Mr. Chamberlain when he refused to defeat the determination of the Newfoundland Government to transfer to a private firm, for very inadequate consideration, a very large proportion of the assets of the Colony. Feeling in the Colony ran high, but the Secretary of State ruled unimpeachably that the grant of self-Government carried with it the authority to decide on such issues. He admitted that " if it was seriously alleged that the Act involved a breach of faith or the confiscation of the rights of the absent persons, His Majesty's Government would have to examine it carefully and consider whether the discredit which such action on the part of the Colony would entail on the rest of the Empire rendered it necessary for them to intervene." There have been similar cases in Australia, My Lord, but an even more striking case of refusal to intervene was seen in 1920, when the Queensland Parliament passed two Acts of a confiscatory character. This remarkable legislation was only secured through the device of swamping the nominated Upper House, a process carried out by an ex-Labour Minister, who had been rather absurdly appointed as the Lieutenant-Governor, and was at the time acting as the Governor in the latter's absence. One of these Acts repealed the assurances given to the tenants of the Crown that on the periodic appraisements of rents of pastoral leases or grazing licenses the limit of increase would be fifty per cent. The second Act provided for the acquisition on unjust terms of the business of the Brisbane Tramway Company. The irregular mode in which the passage of these measures had been carried through and the unfair nature of their substance would have been afforded just grounds for Imperial intervention. It was not indeed seriously suggested that the Acts should be disallowed, but I suggested that the Imperial Government might properly ask the Queensland Government to submit the question of the equity of the Acts to impartial arbitration—for instance, by the Privy Council under special reference. The plan was, however, rejected by Mr. Theodore, the Premier, and the Secretary of State finally refused to intervene. The City of London, however, was able to protect the interests of the pastoral tenants—largely London financed or controlled—and the Tramway Company: for Mr. Theodore found that that money market was closed to Queensland until he came to a just settlement with the two bodies.

Therefore, My Lord, the only protection in such cases is that of goodwill, and the development of the play of the forces, based as

much on its own sheer self-interest as on justice and fair play, to guard against any inequitable or unjust legislation. The attempt to make provision against possibilities has never availed where facts may outgrow legal or constitutional formulæ, or where national opinion is determined to assert itself. You will not escape a capital levy in England merely by a proviso in a Statute or by dicta on the sacred rights of property. The natural and obvious system of free trade and open competition is before our eyes being broken into by anti-dumping duties and the threat of fifty per cent. tariff in Great Britain. After all, you have to trust the future Indian Legislature and Government, and try and get an honourable understanding on your immediate difficulties and apprehensions, and base the future on the goodwill thus created. Do not encumber the constitutional Statute with clauses which can only provoke resistance now and in the future, but frame them in a manner that will encourage the sense of freedom and equality in the Indian and Britisher alike.

Mr. Benthall: That is why, Mr. Iyengar, we were trying to come to an agreement.

Mr. Iyengar: But we want constitutional government.

Mr. Sastri: Just a few words, My Lord Chancellor, on this subject of discrimination. I take a somewhat narrow point of view from which to look at this question. I do not know the commercial and trading implications and consequences.

In the framework of the British Empire the Dominions have certain powers which India desires to enjoy just as well. I would beg my colleagues round the table, especially those who sit to the right of you, to remember that the main motive of the whole of this agitation is to get India on the status of a Dominion. Some of us realise, although not all, that in respect of the defence of India and external relations and paramountcy we cannot yet be a Dominion. It is with great difficulty that we reconcile ourselves to that situation. Before, therefore, any other disability or discrimination between us and a Dominion is proposed and is accepted on this side it will be examined with the greatest possible care, and, unless its necessity is proved beyond challenge, it is not fair to expect us, speaking not only for ourselves but for our children and our children's children, to accept a limitation or a difference which may mean the sacrifice of posterity's interests.

Now commercial discrimination is in the category of a very valued matter. It flows and has flowed in the case of India from political subordination. It is well known—rather I should say it is notorious—that we, the people of India, when we travel abroad within the Empire, even when we have been born and have been settled for generations in a dominion, are discriminated against. The nature of the British Empire is such that freedom is given to a Dominion even to practise discrimination upon its own nationals. I may go and settle in South Africa, I may beget children there and my children may beget children, still they may be submitted

and are submitted to discriminations of a most humiliating type. It happens in Australia; it happens in every Dominion.

Great Britain itself, Mr. Benthall argued the other day, does not discriminate against Indians. It is perfectly true. We enjoy here the status of full British citizens. We recognise it gratefully. But when Mr. Benthall proceeded to say, at the end of one of his striking sentences: Therefore India has no moral right and cannot ask for the legal power to impose discriminations upon us, it seems to me he went a little too far.

Mr. Benthall: I think I said " should not," not " cannot."

Mr. Sastri: Well, I do not know the minute differences between British auxiliaries.

Mr. Benthall: I am sorry.

Mr. Sastri: Now it seems to me that upon the power of Parliament here thers is no limitation; if to-morrow it occurred to the Parliament of Great Britain to put disabilities upon our people, there is nothing to prevent that being done. The power, the full freedom, to act is there, but there is forbearance as well.

Chairman: I hope good sense as well as good will.

Mr. Sastri: When this matter was discussed with great anxiety last year this fact was recognised—that India, too, should have the same freedom, but that she should be asked by mutual arrangement to exercise the same forbearance towards the people of Great Britain and Ireland as that people exercise towards the people of India. I think that was the position last year. When we stipulated that there should be a convention based upon reciprocity we meant that the legal power to act if necessary should be there, but that the forbearance should result from a convention based upon reciprocity. That preserved our self-respect, and we, therefore, accepted it with satisfaction. That was where the matter stood last year. I do not know what has happened since, but our friends seem now to take the matter a good deal farther. When Mr. Benthall says India has no moral right and should not ask for the legal power, I should like to know why she should not ask. Give her the legal power as you contemplated last year, and then get her, upon a reciprocity convention, to forbear even as you have honourably forborne. You will find that she will respond handsomely. Why is she now, merely because she asks for Dominion Status, told beforehand, " Yes, you may have Dominion Status provided you cripple yourself to this extent. We want to impose a disability upon you by law." That seems to me, My Lord Chancellor, to take the matter into a sphere where the self-respect and the national dignity of the Indian people are hurt, and hurt, it seems to me, unnecessarily.

I beg Lord Reading, who has personal experience of this matter, which he will recollect in the days when he was Viceroy and had to deal with troubles in Kenya and South Africa and all over the Empire, to see whether it is really necessary to take this matter

beyond the stage to which it was taken last year, whether he will lend his support to the demand now made upon the people of India that before they can be advanced constitutionally they should be bound hand and foot in a way in which Great Britain is not bound, in a way in which no Dominion is bound. I submit that this is to ask for something which is a mere irritation, and no addition to the forces of good will and mutual confidence. I beg my British friends carefully to consider whether it is necessary to ask that constitutional guarantees of this kind, which can only be worked by the Viceroy, acting singly, which means by the Viceroy acting, as we know only too well by a recent example, under the direction of the India Office here, should be imposed—to consider why such a disability should be imposed upon India before she is admitted even to the possibility of being a Dominion.

Now, if our restrictions are to be in the best interests of India, as on the authority of the late Labour Government the Viceroy recently announced to India, I should like to know how this is in the best interests of India. Have we had political power before within the British Commonwealth and mis-exercised it? Is it based upon experience, this demand that a legal disability should be put upon the future Government of India? If experience is to be a guide, there is none to justify the demand that is made.

On the other hand there is plenty of experience which will justify the taking away of powers which certain parts of the Commonwealth now enjoy. It is not open to us to make such a demand; it is not even open to us to contemplate it. How dare we ask for such a thing! But we may ask this, that we should not be suspected beforehand, and that before being admitted to the sisterhood of the Dominions we should not be asked to produce sureties for good behaviour which no other Dominion was asked to produce or would be asked to produce. Trust us in this matter of commercial discrimination; go back to the reciprocity basis, and make a convention. We must understand each other fully, and I think you can leave it there. We cannot accept a disability which will be a bar sinister not only on us but on our children and on our children's children.

Therefore, Lord Chancellor, it seems to me that I cannot conscientiously support this demand, partly because I see no justification for it, and partly because I do not even see the necessity for it. Whatever you wish to get you can get by means less hurtful to our sense of self-respect.

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Pandit M. M. Malaviya: My Lord, after what Mr. Sastri has so well said on the general aspect of the question, I shall have even less to say than I thought I would have to on the matter which is now before the Committee. It is clear from the discussion that all parties are agreed about one matter, namely, that there shall be no discrimination against British subjects carrying on trade or commerce in India. From the beginning to the end everybody is

agreed on that matter; the only question is as to the method by which this shall be secured.

The formula which was adopted last year goes far beyond the requirements of the case when we look at it from that point of view. It speaks of the rights of British subjects as being exactly the same as the rights of Indian-born subjects. This goes far beyond the region of the protection which commercial interests can legitimately and fairly demand. The necessity of revising that formula has been made very clear by the statement of Mahatma Gandhi. Protection of the rights of persons trading in India is one thing; the development by all legitimate means of the indigenous industries of the country is quite another matter. Foreigners and British subjects trading in India are entitled to ask for the protection of their commercial rights; they are not entitled to ask for that measure of assistance and protection which Indian indigenous industries in India are entitled to ask for.

But the formula as I have said goes beyond this and places both of them on the same footing of equality. To show how it will work in practice we have just to consider the question of bounties, subsidies and other kinds of help which the Government may give to indigenous industries. The British Europeans carrying on trade or business in India cannot ask that bounties or subsidies should be given them on the same footing that Indian firms residing and carrying on business in India would be entitled to ask. Therefore, what is wanted is that there should be a formula which will secure the measure of protection that British merchants are entitled to and not go beyond it. It is a very difficult thing to formulate such a formula. Last year's formula has been examined and has been found wanting. Mahatma Gandhi has put forward another formula, *viz.*, that " No disqualification not suffered by Indian-born subjects of the State shall be imposed upon any person lawfully residing in or entering India merely on the ground of race, colour or religion." I beg all the members—

Chairman: There is another part.

Pandit M. M. Malaviya: I will come to that later. I beg all the members of the Committee, particularly my British friends, to examine it as carefully as they can. The essence of the formula, the principle, is generally agreed—that there shall be no discrimination between the rights of the British mercantile community, the firms and companies living in India, and the rights of Indian-born subjects. That was the formula of last year—no discrimination against the rights of the British mercantile community trading in India. The Mahatma Gandhi has put forward what seems to me a wider and sounder basis—" No disqualification not suffered by Indian-born citizens of the State shall be imposed upon any person lawfully residing in or entering India merely on the ground of race, colour or religion." I fail to understand what more comprehensive clause could be suggested.

Chairman: I am not criticising the clause at all—I have had it copied out for me, and I have got it in front of me, and I have

been studying it very carefully—but some time I will ask you to be good enough to try and translate it into a positive instead of a negative. You see you have a double negative and a double negative makes it a little difficult. I will not trouble you now, but later I should like you to put it into a positive form. You say "No disqualification not suffered." I should like to know what is the positive.

Pandit M. M. Malaviya: To save time I will at once put forward a positive form of that formula which I think will meet Your Lordship's wishes. I propose that it should be expressed like this—"No discriminative legislation shall be passed nor any administrative action taken against any person lawfully residing in or entering India merely on the ground of race, colour or religion." You will see I have done away with one of the negatives. It says "No discriminative legislation shall be passed," for it is by legislation that discrimination may be practised. I submit that this puts the matter in a more positive form, and I commend it most earnestly to the consideration of my British friends. But I recognise, My Lord, that it may not be easy to accept any formula without very careful examination in a matter of the importance of the one with which we are dealing. Therefore, if this is not acceptable, Mahatma Gandhi offered, he definitely said: "Let there be another formula found for it." His attitude has not been the attitude: "I stand by this and I know no other formula." Every other friend has shown a willingness to consider and adopt such a formula as will secure to our British fellow subjects an assurance that there shall be no commercial discrimination exercised against them, and will yet leave the Government of India of the future as free as any free Government is.

If the formula is acceptable now and is accepted, well and good. If it is not accepted, the formulæ which have been put before this Committee and the discussions which have taken place are sufficient, ample and eloquent evidence of the fact that there is a common desire, a desire common to all members of the Committee, that a suitable formula should be found, and that the European mercantile community should have no cause for apprehension that any wrong or injustice would be done to them. I submit that of all the matters that have been so far discussed there has been a greater approach to unanimity on this question than perhaps on any other. And I submit that the spirit which has pervaded our discussions not only in this Committee but also in the private conversations which we have had with Sir Hubert Carr and Mr. Benthall has been very helpful in this matter. We have not felt that we were discussing things from two opposite and opposing points of view, but that we were trying to find out a solution which would meet with acceptance on both sides. I therefore submit, My Lord, that this formula should be considered and if it is not found satisfactory another should be sought after.

I wish to add a few words to what Mr. Sastri has said on the other aspect of the question which arises from it. The formula

which has been suggested in Mr. Benthall's speech seeks to bind the future Government of India hand and foot to a large extent in a matter in which the future Government should be as free as any free Government is. I am surprised that at this critical juncture, this unfortunate juncture in English history, with the facts which are occurring before your eyes every day, with the facts which are before the world every day, the commercial situation and the measures which Parliament has had to adopt to meet the varying situations, that anybody should seriously think of tying down the future Government of India in the manner which has been suggested.

I wish you to have two aspects of the case before your mind. One is the sentimental aspect which in all matters political counts for a world. That sentimental aspect is that the Government of India of the future should feel that it is as honourably free as the Government of England or as the Government of any Dominion. If you impose a restriction or seek to bind over the Government of India of the future by conventions in matters of such vital importance to the nation, you are hurting the sensibility, the national self-respect of India, without any gain to yourselves. Secondly, remember please, that you have to deal with the interests of three hundred and fifty millions of people, one-fifth of the human race. You will not be in India, your statesmen will not be there to help the Government of India of the future to decide what particular measures of tariffs or customs or other measures it should adopt in order to serve the best interests of the people from time to time.

Leave freedom, therefore, to the multitude of counsel that will be found assembled in the future Government of India, to deal with the situations that may arise and to discharge its responsibility to the people even as you discharge your responsibility to your people.

I wish, My Lord, to say in this connection a word also about the definition of citizenship which was regarded as affording one means of solving this problem. With all my respect for Lord Reading—and that is considerable—I regret that he did not see that the definition that he suggested went really too far for the purposes of the case. The definition of citizenship in the India of the future, according to him, should include British merchants trading with India without setting foot on Indian soil. This is a definition which, in my humble judgment, will not find support anywhere, in any parallel. The implications of it will be serious. If you are prepared to consider the possibility of Indians and British subjects being put on a footing of permanent equality or becoming equal partners in all the wealth that we possess, if you are willing to consider to-day that you will extend the benefits of unemployment to the millions upon millions of Indians that remain unemployed from one end of the year to the other, if you are willing to consider that the Parliament of England should pass all the measures that may be necessary to develop the national industries of India, let us sit down and discuss the matter. If not, be content

to recognise differences that exist. God, in his bounteous wisdom and love for man, has made it a rule that every people should live and prosper in the land in which they have been placed; that while they may meet together in friendly commerce and loving service, none shall desire to obtain a domination over the other. Therefore there are certain duties which the Government of every people has to discharge towards that people. It does not follow that the same duties can be discharged towards other people with advantage to the people concerned in every case. It may be something different. I sumbit that the definition of citizenship in the Nehru Report was not meant to include what it was sought in this discussion to include in it. It must be limited to a British subject carrying on trade in India or residing in India. It was not meant to include a British subject who never set his foot on Indian soil. I think, therefore, that that will not afford a satisfactory solution. Therefore I commend again the formula which I have placed before the Committee, and I submit that if this is not found to meet the requirements of the case we should explore another formula.

The other part of Mr. Gandhi's proposal covers—

Chairman: Existing interests.

Pandit M. M. Malaviya: Existing interests. It runs as follows:—

> "No existing interest legitimately acquired and not being in conflict with the best interests of the nation in general shall be interfered with except in accordance with the law applicable to such interests."

The formula which has been suggested by Mr. Benthall is:—

> "The right of private property is recognised and guaranteed, and no person shall be deprived of such property except under due process of law, provided that property of all kinds may be expropriated for public purposes subject to the payment of just compensation, to be assessed by an independent tribunal."

Here again I submit that Mr. Gandhi's formula is wider and better. It says:—

> "No existing interest legitimately acquired, and not being in conflict with the best interests of the nation in general, shall be interfered with except in accordance with the law applicable to such interest."

There are several points in this formula to which I beg to invite the attention of the Committee. "No existing interest"; that means that cases of existing interests are being considered, and that it is not contemplated to cover all cases of interests which may arise in the future. Then "legitimately acquired." I regret to find that objection has been taken to the word "legitimately," and I cannot understand it. The second qualification is also important —"and not being in conflict with the best interests of the nation

in general." It says such interest shall not be interfered with. How? Not by an executive order, but " except in accordance with the law applicable to such interest."

In reply to a question put by Sir Tej Bahadur Sapru, Mr. Gandhi made it clear that his formula did not cover private property generally throughout the country; it was mainly directed towards property which had been Crown property and which had passed into the hands of some private person or persons. Now, is it so very wrong to desire that, where the interests of the nation demand it, cases where property has passed from the Crown into the hands of some private individual should be examined?

Sir Tej Bahadur Sapru: Even where there is a grant in perpetuity?

Pandit M. M. Malaviya: Even where there is a grant in perpetuity.

Sir Tej Bahadur Sapru: Then we differ.

Pandit M. M. Malaviya: I hope to win your agreement. What does it mean when we say that it should be examined? Let us suppose it is a grant in perpetuity. Is it not open to every Government which may have reasons to think that a certain grant in perpetuity is invalid, that it was made on a wrong basis, to have the matter examined in a court of law? I am sure Sir Tej Bahadur Supru will agree that it is.

Sir Tej Bahadur Sapru: My answer is most certainly not, under Indian law or any law; if property is granted to my ancestors and myself, and I have held it for the last fifty years, then the Crown cannot come in, and I would point out that that reservation was expressly made in the Irish Constitution, Article 11.

Pandit M. M. Malaviya: I will deal with that in a minute. This is only to illustrate what was meant; this is not vital to the discussion which we are holding.

Sir Tej Bahadur Sapru: Will you permit me, My Lord, to put a question to Pandit Malaviya on that? I am very much interested in this question, and I want Pandit Malaviya to explain it.

Chairman: Certainly.

Sir Tej Bahadur Sapru: Everybody who knows anything about Oudh knows that after the Mutiny every inch of the ground was confiscated by Lord Canning, and then it was re-granted either to the old occupants of this land or to new occupants, and every single Taluqdar in Oudh, except possibly five Taluqdars, holds his land throughout the Province under grants made by Lord Canning, and under an Act passed by the Indian Legislature in the year 1869. Does Pandit Madan Mohan Malaviya contemplate that the Taluqdars in Oudh or the Zemindars elsewhere should be called on to furnish a statement with regard to their title, and that it would be open to the Government to examine the validity of their title?

Pandit M. M. Malaviya: No, the property shall not be—

Sir Tej Bahadur Sapru: May I ask, My Lord, how this is relevant to the question of commercial discrimination on racial grounds? This is a very large and important question, but it stands very different from the question we are now considering, which is commercial discrimination. This relates to all titles whether in the hands of British commercial men or Indians. How is it germane to the question at issue?

Chairman: There have been so many things said in the last six weeks that are not germane to the question at issue that I do not feel inclined to stop it, but I am sure that Pandit Malaviya has just heard the clock strike. Some day I will debate with you the iniquities of the Statute of Limitations. I am not sure that you and I who have not got property do not take a different view of the Statute.

Pandit M. M. Malaviya: The discussion was not raised by me. It was raised by Mr. Benthall in his speech, the Mahatma had to discuss it, and I am compelled to refer to it. I would like to draw your attention to the Irish Free State Act. Article 11 of that Act says:—

> "All the lands and waters, mines and minerals, within the territory of the Irish Free State hitherto vested in the State, or any department thereof, or held for the public use or benefit, and also all the natural resources of the same territory (including the air and all forms of potential energy) shall, from and after the coming into operation of this constitution, belong to the Irish Free State (Saorstat Eireann)—subject to any trusts, grants, leases, re-concessions then existing in respect thereof, or any valid private interest therein, and shall be controlled and administered by the Oireachtas, in accordance with such regulations and provisions as shall be from time to time approved by legislation."

I would like to emphasise those words, "any valid private interests." They show that there might be some invalid grant which the Government might think fit to examine. That is what I think Mahatma Gandhi's proposal was meant to cover. Let me give another instance. I take it from the constitution of the Serbs, Croats and Slovenes. Article 41 of that constitution says that "large forested areas which have been granted to named persons shall become *in accordance with the law* the property of the State without payment of compensation." There is a similar provision in another constitution. Now I know of cases where forests have been taken posssession of or granted by the Government of India and poor people have been subjected to much hardship. Should it not to open to the future Government of India in such cases to have the matter examined by a Court of Law? I submit there is sufficient justification in the laws which exist in other places for placing a reserve power in the hands of the Government of the

future to have any particular cases investigated. It does not mean that private property generally shall be interfered with. I have read the speech of Mahatma Gandhi carefully twice since our last meeting and I find there is no justification for the suggestion that if his proposal is adopted the title to every property will be unsafe.

Still, I suggest another formula. It has been already mentioned that the Nehru Report contained a formula guaranteeing protection to private property. I had the honour to move it at Lucknow and I still stand by it. That formula is not affected by what Mahatma Gandhi has said. I take my formula from the Polish Republic. The Polish Constitution says:—

> "The Polish Republic (for which I would substitute the Federal Government of India) guarantees the right to property, whether the individual property of citizens or the corporate property of associations of citizens, autonomous bodies or of the State itself, as one of the fundamental principles of society, and of law and order. The Republic (say the Federal Government of India) guarantees to all its inhabitants and communities the protection of their property, and allows limitation or abolition of individual or collective property only in cases provided for by law for reasons of general utility and with compensation."

My Lord, I cannot think of a formula more comprehensive than this, and I do not see any reason why we should not all agree to adopt such a formula and to embody it in the constitution.

There are other constitutions which provide for the same thing. The right of the Government to acquire property for public purposes in accordance with law and after paying compensation is very well established. That is under the Land Acquisition Act. But wherever Government might feel that public property has wrongly passed into the hands of private persons, and that it was needed in the public interests, the Government have the power to take action to recover that property for the general benefit. But everywhere except in one place, in every other constitution of which I have any knowledge, private property is protected, but is everywhere subject to the qualification that it may be expropriated in the public interest without the consent of the owner according to law and upon payment of compensation. Look at the constitution of Denmark. It says:—

> "Property is inviolable. No person may be deprived of his property save when the public good requires it. Expropriation can only take place in consequence of legislation and on payment of full indemnity."

It was never meant that by an executive order the future Government of India should seize a man's property and turn him out. The Norwegian Constitution and other constitutions have similar provisions.

Chairman: Well, we will take your word for that, Pandit Malaviya.

Pandit M. M. Malaviya: Thank you, My Lord. So I submit that private property has no cause for apprehension under the arrangement proposed by Mahatma Gandhi. This formula is one which should satisfy everybody, but if it does not—

Sir Tej Bahadur Sapru: May I be permitted to ask one question? Do you contemplate that private property may be taken away in India only for those purposes for which it is now taken under the Land Acquisition Act, or for any other purposes or for any other reasons?

Pandit M. M. Malaviya: I contemplate that it should be taken for purposes for which it can be taken at present under the Land Acquisition Act, but I do not shut myself up there. The Government of India of the future should have the same freedom to discuss what the public interests may demand when the occasion arises. I cannot offer a solution at present; I cannot foresee it. But, My Lord, I submit that this formula that:—

> " No existing interests legitimately acquired and not being in conflict with the best interests of the nation in general, shall be interfered with except in accordance with the law applicable to such interests "

gives the greatest assurance that anybody can need that in any case that may be taken up the process of law will be resorted to but not a confiscation of any property without it. That I think should suffice for the protection of private property. I strongly support the formula put forward by Mahatma Gandhi and I hope it will be found acceptable after further examination. If it is not, some changes may be introduced and discussed. Here again let me say that we are nearer an agreement in principle and also in almost the language of the formula than perhaps on many other matters.

Sir Tej Bahadur Sapru: May we have that formula in a positive form, Lord Chancellor? There are two negatives in that formula also.

Pandit M. M. Malaviya: No.

Chairman: I think the Pandit is going to try to make it positive so that we may know exactly.

Pandit M. M. Malaviya:

> " No discriminative legislation shall be passed nor any administrative action taken against any person lawfully residing in or entering India, merely on the ground of race, colour or religion."

There is only one negative in it.

Sir Tej Bahadur Sapru: There is " except."

Pandit M. M. Malaviya: No, nothing—" merely on the grounds of race, colour or religion." The other point relates to property.

Now, My Lord, I will say only a few words about Imperial preference. On that question the opinion that has already been expressed is worthy of consideration. On that, the Report of the Fiscal Commission is also a guide. We are quite willing that we should consider the question of Imperial preference, and enter into the most-favoured-nation arrangement with Great Britain. If Great Britain will allow us to do it, if Great Britain will recognise our right to sit on a footing of equality with her and the self-governing Dominions of Britain, then we become qualified to discuss the question of Imperial preference. Why should not we show Imperial preference to our fellow-subjects of Great Britain if they will treat us as fellow-subjects? But so long as you refuse to treat us as equal fellow-subjects, so long as you want to have some powers withheld from us which are enjoyed by other self-governing Dominions, are you justified in asking us to agree to Imperial preference? You are bargaining in a manner which, I submit, does not become your position and which certainly does not help us in our position. Make up your minds, irrespective of the consideration whether we shall agree to Imperial preference or not, to recognise the right and the justice of our being treated as equal fellow-subjects, as equal fellow-men, enjoying the same freedom in our country as you enjoy in your country, and you will find, I venture to say, that we shall not be ungrateful, we shall certainly not be unjust. There is enough in which England and India are interested in which your small island, but a great country, and our extensive country, an ancient land, combined, can contribute much to the happiness each of the other. The three hundred and fifty millions of people in India are a body with which any nation might wish to deal on terms of friendship and goodwill. Establish the goodwill, establish friendship and trust us of our own will, not on your motion, not as a condition precedent to be entered in a covenant, or to be part of the constitution, which has an element of force and compulsion or coercion in it, expect us as free men, ruling in our country as you rule in your country, to enter into an agreement which shall be beneficial to both of us.

Financial Safeguards.

Chairman: That concludes the discussion on commercial discrimination, and we will now begin the discussion of Finance. I want to say only a word or two with regard to that before I call upon Sir Purshotamdas Thakurdas to open the discussion. Whatever our opinions are upon Finance, there is one thing upon which we are all agreed, and that is that the present time is a time of very great difficulty in the financial world, and it is a difficulty which is not only felt in England but which is felt, as you all know, throughout the world.

Personally, I cannot help feeling that it is a time when the less said about things the better. Another point about it is this, that it is a time for experts with a knowledge of national and inter-

national affairs and national and international finance. It is, therefore, not a subject which will bear very much public discussion; rather must we rely upon the opinions of those who are really able, from their knowledge of international finance to guide us in this matter.

Now, everybody knows that at the present time we in England have had to impose upon ourselves very stringent safeguards, and we have had to deny ourselves very many things. I will not say that that has led to discontent, because everybody wants to shoulder the burden; but I do wish to impress on you that this is not a time to relax financial safeguards and not a time to relax our caution in dealing with them; and I feel personally that that is especially the case both in India and in England.

I have before me the pact which was come to between the Governor-General of India and Mr. Gandhi, where it is stated in paragraph 2 that of the scheme which we came to last year Federation is an essential part, and that also are Indian responsibility and reservations or safeguards in the interests of India. I would beg everybody to remember those words "in the interests of India." A careless word or a hastily expressed opinion may have repercussions and reverberations outside this Chamber and cause very great damage not only in India but also in England, and, as I think in many other places as well.

Therefore, although I do not for a moment desire in any way to shorten discussion, I would beg you in the interests of India, and having regard to the very difficult time which the financial world is passing through, to speak with very great caution and with very great brevity and not to let any hasty or unconsidered word cause difficulties or disaster which you would never mean it to cause, but which, if it got about, might possibly result and lead to very great harm.

I therefore hope that our discussion of this subject will not be long, and that it will be very careful; and in due course of time I shall endeavour to put before you in a Report the views of the various members of the Committee.

I now call on Sir Purshotamdas Thakurdas.

Sir Purshotamdas Thakurdas: Lord Chancellor, when you addressed us at the beginning of the discussion of the three items of Army and External Affairs, Commercial Discrimination, and Finance, you expressed a desire on the same lines as what you have just said, that it would be wise to express our views in general terms and not in detail. I fully perceived then the necessity for not dealing with any special grievance of India regarding either exchange or currency or the financial control as at present exercised on us in India from Whitehall, but I cannot help feeling at the same time, My Lord, that, as far as the international world is concerned, India has, if I may say so, very little influence. We have met here to influence you and those on your right, and to put before them the aspirations of India—if I may call them so, the

minimum aspirations of India—as to what form of government and what particular safeguards in the interests of India alone would be acceptable to us. If anything more than that is imposed, we would not look on it as an advance.

Your Lordship has referred to the present condition of world finance. I wonder if you did not mean the present condition of affairs generally in the world, financial, economic and otherwise.

In spite of this we feel we ought to submit to the Conference here and especially to the British Cabinet and through them to the British Public our views as to how we would like the finances of India to be managed. We say the finances of India should be managed by a Minister responsible to the Indian Legislative Assembly and responsible in the most complete manner. Safeguards we are prepared to accept whenever they are proved to be in the interests of India but any safeguard regarding finance other than this cannot be conceived by us to be justified. Your Lordship has referred to world conditions. It strikes me, My Lord, that there is a peculiar significance in the way in which the most undesirable occurrences have, as it were, been concentrated into the period of our sittings here during the last few weeks or rather months. They have conspired to make your difficult task more difficult and certainly less beneficial to us. One of them is the Parliamentary Election here and the consequent diversion of the attention of yourself and your colleagues on this Committee to matters other than those directly concerned with this Conference. It would almost appears as if our task, which was difficult in any case, was to be made more difficult by some of those world factors. But every evil has its redeeming feature and so I think I may say that if you can come to a clear understanding in such an unfavourable atmosphere, there is hardly any danger of our conclusions being either extravagant or being taken in a mood of over-enthusiasm. There strikes me, at the moment, a little oppression in opening the discussion on this question. I am oppressed by a feeling of some unreality due to what has been appearing in the Press and what one hears outside—that is that we are merely to put forward our views and that there is not to be any exchange of views between you and us regarding this question. If that is the best which can be done by the Cabinet and by you here, all I can say is that we have no option in the matter.

Finance, My Lord, is one of those subjects which, in the future Government of India, should be completely transferred to and put in charge of a Minister without any safeguards at all except of course those which are ordinarily involved in the constitution and those which may be proved to be in the interests of India. The control of finance has been admitted to be fundamental, for finance has a bearing on all the activities of government. It is agreed that it is highly technical but it is a vital part of administration. The Government of India in their Despatch emphasise the necessity of safeguards not merely on the ground of the credit of India and of the Government of India; not only on the ground of maintaining

the capacity of the Government of India to borrow, and the solvency of the Government, but also they say it should include the vast private capital invested in India by Britishers. I venture to say that this is not a proper ground to be put forward. There is a difference between capital borrowed by the Government from outside India and capital invested by the non-national trading community to which Mr. Benthall referred in the discussion on commercial discrimination. Is there any wonder that we in India feel very apprehensive of any external capital, if at this juncture and in consideration of how the future finance of India should be managed, we are told that in the vast magnitude of the interests to be safeguarded by the Secretary of State there is also to be considered not only the credit of the Government of India *per se*, but there is also to be considered the question of the British capital invested in India.

These considerations, however, one sees with some relief are not in the opinion of the Government of India to create a permanent and insurmountable obstacle, but it is opined that there must be "careful preparation," to use the words of the Government of India. It is said that Parliament must demand some signal guarantee for the future. Exactly what the "signal guarantee" is to be is not indicated more precisely in the Despatch. We are told that a sudden and fundamental change would create uncertainty and doubt as to the future policy, and it may mean financial and economic disaster to India. I venture to ask: where is the suddenness about this demand by us? Have we not been asking for liberty to control finance in India for ten years at least, if not longer? What is the use of the change if it is not to be fundamental but is to be only in petty details? Government admit that a change is always unsettling. May I add that it is unsettling at any stage and at any time. Do I understand, therefore, that those who support the Government of India point of view mean that we are never to have a change because a change is unsettling? Will amounts borrowed by the Government of India in the United Kingdom go down in the interval between now and the period when they feel that the preparation which they indicate is complete? In short, will all these grounds, if accepted, not always be there and thus deny India the right of managing her own affairs in the domain of finance?

My Lord, I do not wish to refer to any of the actions of the Government of India either of commission or omission, regarding India's grievances in connection with the management of her finances during the last ten, twenty, and thirty years. I have here with me a very useful brochure, which was published by the Federation of Indian Chambers of Commerce and Industry last April, under the heading: "Indian Currency and Exchange, 1914—30; How Government have managed it." I venture to recommend it to anyone who has the time to read it and wishes to get more information and details; every fact mentioned in this brochure is taken from Government records and from authorised publica-

tions. But, whilst I do not wish to criticise here the various actions of the Government in the past, I cannot help saying that all these together create a picture which, as far as we in India are concerned, tries our patience and convinces us that any future reforms will be useless if finance is not completely transferred to us to be managed by us and by a Minister responsible to the representatives of the people in India.

I sincerely do not wish to say anything regarding the comparatively sparing and, if I may say so, miserably inadequate manner in which the Finance Member of the Government of India from time to time has been able to control the increase of expenditure in the Military Department of the Government of India. I do not think it is an exaggeration to say, that if we had a Minister responsible to the Legislature, he would have been out of his office several times before the current expenditure of the Government of India for the Military could be at anything like 50 crores. Before the war, Sir, our expenditure was 29 to 30 crores, and there were continued complaints against that expenditure as being too high and absolutely crushing to India. In our index number we have gone back to nearly 100 in India and the military expenditure has been kept even now at about 50 crores; it was 54 crores last year and we are told that it will be somewhere about 47 crores this year. I call this, in one word, a scandalous amount of burden on the poor taxpayer of India, and all I can say is, that a Finance Member who owed responsibility to the Legislature would certainly have seen that this expenditure was very substantially reduced long before now.

I wish, therefore, now to deal with one or two peculiar features in Indian finance. One of these features is that the item of defence —which is proposed to be kept reserved and not completely transferred—of pay and pensions, and of interest on India's indebtedness, these three items between themselves absorb eighty per cent. of the Central Government's net revenue. In paragraph 173 of their Despatch, the Government of India use these words. I am reading now from page 148, paragraph 173 (*b*):—

> " (*b*) in this case the total of the charges, including only cost of the Army, interest on loans and pensions, amounts to about eighty per cent. of the net revenue of the Central Government. When a ' first charge ' absorbs all but a narrow margin of the total revenue, the security implied by the nomenclature disappears. In such a case, the authority responsible for seeing that these payments are made, has an intimate concern in the whole financial administration of the country."

Of the three items, two are such as cannot be reduced substantially —namely, pay and pension, and interest—but the third is one which needs very substantial reduction. It is this same consideration which make us say that nothing but a Minister completely responsible to the Legislature will satisfy us, and that no safeguards

devised by this Conference in the shape of control from outside India will be acceptable to us.

There is one more feature of the finances of India which I think requires to be mentioned. A good deal has been said regarding India's credit. The borrowings of India to-day—I give the figures available as up to the period 31st March, 1931—amount to approximately 1,171 crores. They are roughly half and half—half in rupees and half in sterling. The rupee borrowing is 654·95 crores, and the sterling borrowing—*i.e.*, the total foreign borrowing of India works out at 517 crores with exchange at 1*s.* 6*d.* to the rupee. For all practical purposes we may say that the total indebtedness of India is half in India and half in Great Britain. I do not overlook the fact that a certain part of the sterling borrowing may be held by Indians or that a certain part of the rupee borrowing may be held by Britishers; but as figures are not available to the public we may take it that half the interest in the credit of India, the borrowings particularly, is in London, and the other half is in India. With this special feature I wish to ask whether it is conceivable, in fairness and in ordinary common sense, if I may say so, that we in India would be so rash as to ask for any system of reform which would endanger the safety of those in India who hold the Government paper—this 654 crores of rupees.

Is it not that the interest of the British investor is identical with the interest of those of us in India who hold Government paper and Government indebtedness? I wonder whether the Britisher here who asks for special safeguards regarding his holding of Indian Government paper is genuinely apprehensive about the solvency of India so far as the existing debt is concerned, or whether there is anything else which makes him so apprehensive.

With regard to the solvency of India, we have been repeatedly told that India is one of the few countries in the world which has a comparatively light amount of debt. We are told further that most of the debt of India is productive debt, and that the unproductive figure in the total debt of India is comparatively very small. If I am not mistaken, responsible representatives of the Government of India have said that it is almost a bagatelle.

Why, then, is there this extra caution and this apprehension that the management of finance in India cannot be left with the Legislature in India, and especially cannot be left to be looked after by those whose interests are the same as the interests of those who hold Government of India paper here?

We are told that Government have responsibility regarding exchange and currency. "The underlying idea in all countries" it is said, "is that the currency authorities should be free to conduct a policy in accordance with the dictates of sound finance, detached from all political influence." I fully agree with that, with this caveat that the political influence which has to be detached should be not only political influence in India but should also be political influence from here. What other influence do the India Office here

and the Secretary of State exercise but political influence? Why, then, ask for finance to be a reserved subject and say that as far as the Reserve Bank is concerned it should be free from political influence in India?

I submit, My Lord, that, whilst I and those whom I have the honour to represent here are all for a sound bank being started whenever it is feasible to start it, and may agree to political influence being kept outside it, it is all the more imperative, in our opinion, that it should be ensured that the political influence from here, which is stronger, surer, and, I venture to submit, not always in India's interest, should not be there either directly or indirectly in any form or shape. We can not possibly risk political influence from here being in the slightest degree exercised either on the Government of India in the Finance Department or in connection with the Reserve Bank.

We therefore feel, Sir, that no Reserve Bank would be acceptable to India unless it is started by a Statute in the Indian Legislative Assembly. That is my firm conviction. We will be a party to nothing else. We would rather go without a Reserve Bank than have one started by any Legislature other than our own in India. You can there have the necessary restrictions about political influence being kept out, but it should also be free from any other political influence from any other quarter.

This question of the Reserve Bank, My Lord, brings me to the question of exchange and currency. That is the domain where Your Lordship's hint and very wise advice I propose to accept in the very fullest degree.

There are two problems in connection with exchange and currency questions in India. One is the immediate problem, which I may not touch upon in detail because that is the one question which, dealt with here ever so cautiously, may have that influence which Your Lordship wishes to see avoided.

But I submit that that does not shut me out from dealing with the question of the management of exchange and currency in the future. Before I leave this question of the immediate problem of exchange, may I say a few words in general? Your Lordship has referred to what has been forced on the Government here—the breaking away from the gold standard. Whether we in India could have afforded to keep on the gold standard at the point where it was kept until September last is a question on which I have strong views. It is a question to which I do not think I need more than merely refer in passing here, but there is no doubt about it that India was tied to the chariot wheels of England and as soon as England made up her mind to go off the gold standard the order went out that India should go off the gold standard too. I personally think it saved the reputation of the Government of India and of the Finance Department because I do not think that they had enough gold reserves to carry on on the gold standard in the extravagant manner in which they were carrying on, dissipating their

reserves in a manner which would not have been done if we had had a responsible Minister. Still, your action here last September did save their face, and saved a complete breakdown in India. We were told a week earlier that we could not go off the gold standard because the credit of India was in jeopardy, but as soon as England made up her mind to sacrifice her credit India's so-called credit did not matter. In the Legislative Assembly there was a demand for an adjournment of the House, and the division on that adjournment motion was one of the biggest divisions I remember. Practically every elected member—and I think a few nominated members, though I am not sure about them—voted for the adjournment motion, and this motion which is generally regarded in our country as a motion of censure was carried in the Legislative Assembly.—

Thanks to Sir Samuel Hoare we have had two informal conferences at the India Office since 5th October last, and we hoped that the matter would be discussed further. We hoped that in view of the strong opinion expressed by the Legislature we should hear something more about it. I can assure Sir Samuel Hoare and those in control at the India Office that none of us wished to have a single inkling earlier than would be given in the ordinary course to the public, but we felt that we were entitled to press on the India Office our apprehensions regarding economic conditions in India being worsened. If England, which had gone back only to the pre-war ratio to gold, found it necessary, with all her riches and her resources and her credit, to go off the gold standard, how could it be expected that India, an agricultural country, an admittedly poor country with less credit and less resources, could continue, without great distress, to maintain her ratio to gold at 12½ per cent. above the pre-war ratio. But since 25th September we have gone up in sterling from 1*s.* 5¾*d.* to 1*s.* 6$\frac{3}{16}$*d.* to the rupee. I can only say that there is a great feeling in India that the grossest injustice has been done to India again. I will leave my remarks at that as far as the immediate problem is concerned.

Regarding the permanent problem of the question of Indian currency it is suggested that there should be control until a Reserve Bank comes into being. That period is indefinite, and is getting more and more indefinite as world conditions get worse and worse. It is suggested that during that period there should be control from the India Office, until a Reserve Bank is established and the day to day management is handed over to it. Until that period it is said that there should be control from here. Various suggestions have been made as to what can be done for this period of transition. We in India feel that as far as exchange and currency is concerned the India Office certainly has not a record of which they can be proud or with which we can be satisfied. The two Commissions which inquired into the question of the currency of India during the last eleven years certainly have not proved to be Commissions which have been able to see more clearly than the ordinary man in the street. Why not let the people of India, who are directly

and primarily affected by these matters, risk their own good fortune, and make an effort to run their own show?

I therefore feel, Sir, as far as the management of exchange and currency is concerned, while the Reserve Bank appears to some of us to be a long time in coming (and may circumstances be such that a Reserve Bank can be assured next year), until then, in the interregnum we feel that we cannot rely on the wisdom from Whitehall being exercised on the Indian problem in a manner which would be less risky than what we can do in India with out little knowledge. If we make mistakes in India there will not be any suspicion that those mistakes were made in any interests than those of India. And in this connection there is a very unfortunate sentiment expressed in the Government of India's despatch.

Chairman: What page is that?

Sir Purshotamdas Thakurdas: Page 151, paragraph 176, the last sub-paragraph:—

> "We should hope that it would be possible to convince Indian opinion of the desirability that such a bank should work in close co-operation with, and on lines approved by, the Bank of England."

Why should the Reserve Bank in India be tied down to work on lines approved of by the Bank of England? We recognise that the Bank of England is the premier bank, that it has influence and that it has experience to which I personally take off my hat every time.

Chairman: Then would you agree with the last sentence in that paragraph?

Sir Purshotamdas Thakurdas:

> "Whatever the future for India may be, she must always be greatly dependent upon her standing in the London money market, and nothing could be of greater service in this direction than a close co-operation between a Central Bank for India and the Bank of England."

I am coming to that.

Chairman: You agree with that, I suppose?

Sir Purshotamdas Thakurdas: I will come to that in a moment.

Chairman: I said: You agree with that view?

Sir Purshotamdas Thakurdas: I am going to deal with it in a minute, if Your Lordship allows me. I was going to say, Sir, there is no reason why the Reserve Bank in India should be committed to work on lines approved by any bank; and whilst I myself have a very great opinion of and great respect for the experience of the Bank of England, I personally feel that India should be left free to take advice, guidance and counsel from such institutions as she likes.

Personally I have not the least doubt that if the people in power here have self-confidence we would every time come to England and

go to the Bank of England, but we do not want to be tied down to it. That is my reply to what Your Lordship asked. I personally feel that every time you lay down that we shall go to Whitehall we feel that we may do better elsewhere. But if you feel that Whitehall has such knowledge, such experience, is such a repository of wisdom regarding Indian affairs, why not leave us free? We must resort to it for advice in our own interest. And, similarly any Minister of the Government of India who is responsible to the Legislature will go to the one place where he can get the best advice. I myself have not the least doubt that the Bank of England will be the one place where he will go, and that the Bank of England would be the one institution from which we would want guidance, but we would not agree to it being laid down anywhere that our bank should work on lines approved of by either the Bank of England or, for the matter of that, by any bank. I feel, that whilst we want all the good will that we can get from the London money market, the London money market is not going to lend us money simply because we have a Secretary of State here who has control over Indian affairs. The London money market will lend money only if the economic condition of India is sound, only if our budgetary position is balanced, only if things in India are settled down and are going on normally; and whilst I would solicit all the good will from the London money market and from the Bank of England, I would not agree to any handicap or any safeguard being put on to the Indian constitution for the mere purpose of getting their good will. I expect their good will to be there, and to be available to us as a business proposition whenever we can put before them a proposition which is sound on its own merits, and not owing to any artificial trammels like Whitehall controlling our destinies.

Now, My Lord, in paragraph 176 the Government of India Despatch refers to special difficulties regarding the present financial and economic position in India. I fully agree with that. Since that Despatch was written, those difficulties have, if anything, increased.

Chairman: Quite right.

Sir Purshotamdas Thakurdas: And have not diminished; and all that I can say is that the diminution of them and any relief under those conditions, require a bold step to be taken from here in the direction of meeting the wishes of India.

Chairman: Would you agree with the last sentence of paragraph 176? You were just quoting paragraph 176, and you said you agreed with it. Do you agree with the last sentence?

Sir Purshotamdas Thakurdas: Which, Sir?

> "It would indeed hardly be possible to imagine a combination of circumstances more unfavourable to an immediate change of policy, which might result in shaking public confidence in the credit of India."

I do not agree with that at all. I agree with the description of the conditions in the interior of India as indicated in paragraph 176.

Chairman: I put it in fairness to you, because you said you agreed with paragraph 176, and then I said I assumed that that meant you agreed with the last sentence as well; but you make an exception there. I follow.

Sir Purshotamdas Thakurdas: The last sentence is not a description of the circumstances existing in India; it is their own inference.

Chairman: You do not agree with the last sentence.

Sir Purshotamdas Thakurdas: I do not agree with the last sentence. I contend that the delay in the reforms may have contributed to a certain extent; but that is not pertinent to my subject.

The Government of India indicate a certain period of preparation—that is in paragraph 179—and they say that they will have to work out a financial programme for the future which will inspire confidence. One wonders what is this financial programme which His Excellency the Governor-General's Executive Council have in mind. I wonder if we could have any information on that score from Sir Samuel Hoare.

We feel that the programme which requires to be worked out now is the programme of trusting the people of India. Give them the right, as was said by somebody here, to make mistakes in working out their own destiny, with the usual safeguards.

The Government of India accept the position that eventual transfer is implicit in the Government's declared policy of advance, and they also accept that the control of finance is vital to any form of self-government. How can they expect India to be satisfied without that complete control?

The Report of the Federal Structure sub-Committee at the last Round Table Conference, paragraphs 18 and 19, indicates the safeguards which were then suggested. They referred to financial stability and to the credit of India outside and at home, and I infer that from these two considerations it was suggested that it was necessary to reserve powers to the Governor-General with regard to budgetary arrangements and borrowing. But would not the powers of the Governor-General in the usual course, which are indicated in paragraph 21 of that Report, be sufficient? Continued deficit budgets not covered, and reckless borrowing, would hurt the Indian investor first and most directly. The price of the Government paper would go down, and it would hurt the Indian investor as much as it would hurt the investor here in London. Why not, therefore, trust the Indian public which has a vested interest in the matter of Government borrowings, to safeguard the position?

Personally, My Lord, I feel with regard to both these questions that it is the Indian investor who will be anxious that the Finance Member of the future shall not run away with the bit in his

mouth and risk doing something which may jeopardise the holdings of Indian investors.

We therefore feel, My Lord, that as long as we are trusted there is no necessity for those who have lent to the Government of India to ask for any special safeguards, and I submit that when we are told that the time is not yet, and that there has to be a period of preparation, we cannot help feeling that this will be construed by many as merely a blind and an excuse. I trust that that cannot be the intention of the Cabinet here, but things are not going to improve because of delay. Whenever power is transferred, it will have to be transferred in full confidence to the Indian Legislature. What new factor is expected to develop which will make the task easier a year hence, or two years hence, or, if some people prefer it, five years hence?

The credit of India, I submit, cannot be allowed to be spoon-fed by the Secretary of State any longer. People in India and in England and elsewhere will lend money to the Government only if the economic condition of the country warrants it. People will not lend if they find the Government has a succession of deficit budgets. The Secretary of State has lately paid rates of interest on behalf of India here which have certainly been *the highest* paid by any respectable major Government in London at that period. How, therefore, can it be said that the mere fact that the Secretary of State will have some sort of control will by itself be of advantage to India?

And here I want to make it clear that it is generally agreed, at least in private conversations, that no retained control of the Secretary of State as at present is necessary or desirable. I ask: If the Secretary of State has some sort of control on the future Finance Department of the Government, how is it going to make a difference? I feel, Sir, that what is required is principally: Are you prepared to identify the interests of those who hold the Government of India's paper here with the interests of those who hold it in India? And, as I said, the figures show that the borrowings are half here and half there—in fact more than half in India. As far as the London holder is concerned, he has the Governor-General there with the powers which are indicated in paragraph 21.

Regarding the question of successive Budgets being deficit Budgets and being allowed to be kept at that, I venture to ask, Sir, whether that has not happened till now whilst the control of the Secretary of State from here was on? What were the Budgets in the years 1920, 1921 and 1922 like in India? And was not a substantial increase in the amount of India's indebtedness due to these deficits? Had not that to be finally consolidated into a sort of permanent debt? How can you lay down anything here which would be satisfactory under a certain set of circumstances which we cannot envisage to-day but which may indeed come in the near future or the distant future? How can you to-day lay

down anything to provide that you cannot have more than one deficit Budget or more than two deficit Budgets? Personally I would not like a single deficit Budget to be carried forward; but certain circumstances in India, *e.g.*, famines or continued depression of trade and so on, may make it imperative and may make any other course almost a danger. I therefore feel that there also, inasmuch as Government paper in India in future will depend for its attractiveness or otherwise on the manner on which our Budgets there are balanced, to that extent the best safeguard that you can have is the credit which that Government will command both abroad and at home. The Upper House in the Central Legislature would have direct voice in the Budget and any legislation and the public at large would be continuously watchful if they realised that they were free to manage their affairs in the manner best suited to India.

I want to say one word before I conclude regarding the Statutory Railway Board question. The railways of India are one of the best assets of the taxpayer in India; they constitute one of the largest assets of the taxpayer in India. That is a source from which not only do the Central Government receive substantial revenue every year, assuming the machine to be decently well managed, but it is most useful to bring the distant parts of India together and make India one. It is also a very useful weapon in the development of industries and with regard to relief being made available to the growers of India's crops. The Government of India deal with all this fully in their Despatch. We want a Statutory Railway Board to be started, but again that must be done by a Statute of the Indian Legislature and by nobody else.

I wish to say that we are as keen that the Statutory Railway Board should be started in India—with the consent of and by a Statute of the Indian Legislature—as I said we were regarding the Reserve Bank. If any efforts are intended to put on to us in India any machinery in this connection devised by any other Legislature than the Indian Legislature, all I can say is that it will meet with the strongest opposition and will lead to most unnecessary suspicion. I do hope that this will be left to the Legislature in India.

In conclusion, My Lord, India must have control of finance in India, and no control of finance from England, either day-to-day control or otherwise. The only control would be the normal powers exercisable by the Governor-General. I feel that I cannot do better, in this connection, than read out one sentence from the appeal which my Right Honourable friend, Mr. Srinivasa Sastri, made in the Federal Structure sub-Committee last year. He has one telling sentence. It is a fairly long quotation. I do not wish to read it all, but there is one sentence in it with which I can most fittingly conclude my remarks. My Right Honourable friend said:—

> "I am therefore positive that we should have finance transferred to the Government of India without any restric-

tions or safeguards, without any suspicions as to our capacity to manage our finances honestly or efficiently, and it is only if we are placed in untrammelled control that we can find ourselves truly in the new constitution."

I have finished, My Lord.

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(The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.)

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Sir Tej Bahadur Sapru: My Lord Chancellor. As last year, so also on this occasion, I do not propose to go into the technical side of the question of finance.

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I think the technical side has been discussed very thoroughly this morning by Sir Purshotamdas Thakurdas, who is entitled to speak with authority on questions of this character, and last year by my colleague, Sir Bhupendra Nath Mitra. I therefore propose to confine myself to an examination of the constitutional position, the legal position of finance under the present system of government and the constitutional position which, in my humble judgment, finance should occupy under any constitution that may come into existence. I have just said—any constitution that may come into existence. My Lord Chancellor, speaking on this occasion, I feel that there is a sense of unreality about the whole discussion. It is impossible for me not to give expression to the feeling that all this discussion which we have been carrying on will have most material bearing and most useful effect if the result of our deliberations during the last two months, or, if I may say so, of our deliberations during the last twelve months, is going to lead to responsibility at the Centre; but if all that is in store for us is that blessed word Provincial autonomy, which gives comfort to a certain class of politicians in England, then let me tell you I am here to explain my views, because I consider it a part of my duty, and not because I think I am going to get anything out of this discussion.

I do not wish the British Delegation to remain under any misapprehension as to our attitude so far as the political future of the country is concerned. I am here because courtesy demands that I should place my views before you, not because I feel that the situation as it has developed during the last two or three days lends any scope for any hope so far as we on this side are concerned. I, therefore, give that warning in the friendliest spirit, but in the firmest and plainest language.

I will now pass to my subject. Lord Chancellor, the paragraphs which deal with finance in the Federal Structure Committee's Report are paragraphs 18, 19, and 20. Your Lordship will remember that the question of finance in relation to safeguards was discussed at great length by Lord Reading last year, and the whole

discussion last year proceeded on the footing, not that finance was to be a reserved subject (an expression which has been incautiously and inadvertently used at this Session), but that it was really going to be a transferred subject, though it would be subject to certain safeguards. Certain powers would be reserved to the Governor-General which might be used by him on certain occasions, in certain circumstances and conditions. Therefore, when I am proceeding to deal with this question of finance to-day, I am proceeding on the assumption—and on no other assumption—that finance is going to be a transferred subject.

Frankly, I do think that finance is the life-blood of any responsible government; and although you may give us everything else, yet if you do not give us finance, I for one do not look on the sum total of our gain as amounting to responsible government. That is the view which I take of this matter.

Now, let us examine what exactly is the present position under the Government of India Act. If Your Lordship will be pleased to turn to a few sections through which I propose to take you, the present position will be abundantly plain. The material sections dealing with finance in the Government of India Act are sections 20, 21, 22, 26, 67 (2*a*), 67A, and 67B.

* * * * *

Now, My Lord, according to Section 20:—

> "The revenues of India shall be received for and in the name of His Majesty, and shall, subject to the provisions of this Act, be applied for the purposes of the Government of India alone."

I would particularly invite the attention of the Committee to these words:—

> "For the purposes of the Government of India alone."

They are very useful and wholesome words, and in any future constitution I should like these words to be repeated. Now these words to my mind give ample safeguard against the suggestion which has been made in some quarters, or which may possibly be made, that a new and inexperienced Legislature may play with public money and may abuse it, or may use it to other than legitimate purposes. I do submit that these words impose a statutory limitation upon the power of the user of public money: that the money must be used for the purposes of the Government of India alone.

Let me further add that so far as these words are concerned they have formed the subject of discussion and rulings by various law Members and also by various Judges of the High Courts in India, including such eminent Judges as the late Sir Ashutosh Mukerjee and the late Chief Justice of Madras. If I may be allowed a personal reference, I will appeal to Lord Reading. When I had the honour of being associated with him in the Government both he and I had to consider the application of these

words in connection with a very big corporation which applied for a loan to the Government of India at that time; and I can say, without divulging any secret, that my ruling was explicit and clear and was endorsed by the entire Government of India and also by the India Office at that time. I had the satisfaction shortly after that this same view was taken by the Madras High Court. Therefore I maintain that it will not be a possible objection that if finance is transferred to popular control the irresponsible and inexperienced members of the Legislature will make other than legitimate use of public money. There will be always this section to be used against them if they want to lay their unholy hands upon public money.

Now, My Lord, Clause (2) is equally important:—

> " There shall be charged on the revenues of India alone—
>
> (*a*) All the debts of the East India Company; and
>
> (*b*) All sums of money, costs, charges and expenses which, if the Government of India Act, 1858, had not been passed, would have been payable by the East India Company out of the revenues of India in respect of any treaties, covenants, contracts, grants or liabilities existing at the commencement of that Act; and
>
> (*c*) All expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India."

Here again I will particularly invite Your Lordship's attention to the words " lawfully contracted," and the words " on account of the Government of India ". They are words of limitation and, therefore, they to my mind provide an ample safeguard.

> " (*d*) All payments under this Act (except so far as is otherwise provided under this Act)."

Therefore, unless you are prepared to accept the suggestion of Mahatma Gandhi that debts should be investigated and that certain debts should be wiped out—which I think I am not entitled to assume is your disposition—I submit this Statute itself provides the amplest possible safeguard for a certain kind of securities. All the debts of the East India Company are guaranteed by it; they are a charge on the property. Similarly:—

> " All sums of money, costs, charges and expenses which, if the Government of India Act, 1858, had not been passed, would have been payable by the East India Company "

are a charge on the revenue. Similarly:—

> " All expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India "

are a charge and will continue to be a charge.

Now, My Lord, I pass on to section 21, and I would particularly invite Your Lordship's attention to section 21, because that is the

section which places all power in the hands of the Secretary of State. It says:—

> "Subject to the provisions of this Act, and rules made thereunder, the expenditure of the revenues of India, both in British India and elsewhere, shall be subject to the control of the Secretary of State in Council."

It is the expenditure of the revenues of India which is under the control of the Secretary of State; but Your Lordship will be pleased to observe that so far as this chapter of the Government of India Act is concerned, or rather this part of the Government of India Act is concerned, or any other part, the Secretary of State's personal or official security for any debts is not provided for. I am only pointing that out because in the course of our discussions with financial authorities here it has been pointed out to us repeatedly that the English investor feels confidence in Indian loans because at the back of his mind is the feeling that the Secretary of State is in some way or other a surety for that loan. Now, so far as the legal and constitutional position is concerned it is not so; the loans have got to be paid out of the revenues of India. The Secretary of State, no doubt, is a member of the British Cabinet, and there is the general moral credit of the British Government there. An investor may rely on that moral credit, but so far as the legal and constitutional position is concerned I say that the investor has got to look only to the revenues of the Government of India and nothing more.

I then pass on to section 26, which says:—

> "The Secretary of State in Council shall, within the first twenty-eight days during which Parliament is siting next after the first day of May in every year, lay before both Houses of Parliament—
>
> (*a*) an account, for the financial year preceding that last completed, of the annual produce of the revenues of India, distinguishing the same under the respective heads thereof, in each of the several provinces; and of all the annual receipts and disbursements at home and abroad for the purposes of the Government of India, distinguishing the same under the respective heads thereof;
>
> (*b*) the latest estimate of the same for the financial year last completed;
>
> (*c*) accounts of all stocks, loans, debts and liabilities chargeable on the revenues of India at home and abroad at the commencement and close of the financial year preceding that last completed, the loans, debts and liabilities raised or incurred within that year, the amounts paid off or discharged during that year, the rates of interests borne by those loans, debts and liabilities respectively, and the annual amount of that interest."

I omit the rest. So that you will find that under this section the control of Parliament in the last resort is complete, final and absolute; and when we are told that finance shall be or may be, for a certain period of time, under the control of the Secretary of State, let us remember the implication of such a suggestion. The meaning and implication of that suggestion is that the ultimate control shall vest in Parliament; and so long as the ultimate control vests in Parliament—it may be for five years, it may be for ten years—in truth finance will not be a transferred subject, and if finance is not a transferred subject then the responsible government that you will establish will be a maimed or a paralysed sort of government.

Then I pass on to the next section. That is section 67 (2) (*a*) and that again is very important, showing what the constitution provides in the nature of safeguards already, and what I venture to suggest would be more or less the line of progress in future. Section 67 (2) (*a*) says:—

> "It shall not be lawful, without the previous sanction of the Governor-General, to introduce at any meeting of (either Chamber of the Indian Legislature) any measure affecting—
>
> (*a*) the public debt or public revenues of India or imposing any charge on the revenues of India."

That was the section which was relied upon last year by those who suggested that during the period of transition there must be such power vested in the Governor-General in regard to matters of currency and exchange and things of that kind. Whether you can have the previous sanction of the Governor-General consistently with the responsible character of the Government is a question on which I venture to differ from those who put forward that view. I then pass on to 67A. Under sub-section 3 you will find that the subjects mentioned therein as outside the power of the Legislature are interest and sinking fund charges on loans, expenditure on which the amount is prescribed by or under any law, salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council, salaries of Chief Commissioners and Judicial Commissioners, and expenditure classified by the order of the Governor-General in Council as Ecclesiastical, Political and Defence. Those are the protected subjects in the present constitution. If the arrangement which we suggested last year and which I repeated only a few days ago in this Committee with regard to the Army comes finally to be accepted, the expenditure with regard to Defence, and possibly also—certainly also—with regard to political subjects will also continue to be protected under that arrangement for the period of transition.

Then, My Lord, comes the final section with which I want to deal, and that is 67B. Section 67B is known popularly as the section of certification, and I would invite your attention to the

very unrestricted and general language used in this section. The section says:—

> "Where either Chamber of the Indian Legislature refused leave to introduce or fails to pass in a form recommended by the Governor-General any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity, or interests of British India or any part thereof."

and thereupon you have a procedure laid down which I will not read at the present moment. This section is, I think, the very negation of responsibility, and it would be fully out of place in anything which set out to give us any measure of responsibility. I made my position abundantly clear last year and I wish to repeat that I would much rather have the present statutory powers remaining in the Viceroy rather than have anything like this which would bring him into repeated conflict with the Legislature, which would create a sense of irritation and which would lead to serious deadlocks between the Executive Government on one side and the Legislature on the other, with the Governor-General on one side and the Executive Government on the other. Therefore, so far as I am concerned, I must be taken to be an unqualified opponent of any kind of power of certification.

Chairman: Do these remarks refer only to what you would regard to be reserved subjects, namely, the Army and External Relations, or are you only saying that Finance ought not to be a reserved subject and that therefore certification does not apply to that?

Sir Tej Bahadur Sapru: I would have no power of certification vested in the Governor-General, even in regard to the Army and political subjects. I would create specific charges on the revenues of India for the Army and the political side, or any other subjects, after an examination of the present position and after arriving at a basic figure.

Chairman: Would you accept some such form as this?

> "If the Governor General certifies that its enactment or, as the case may be, its enactment in a form other than that in which it was passed, is essential to the discharge of *his* responsibility, the Governor-General should have power thereupon to enact the Bill as a Governor-General's Act in the form in which it was recommended, with any modifications he would think expedient."

You will see that the words there are "essential to the discharge of his responsibilities," and for the moment I am only referring to the Army and External Relations.

Sir Tej Bahadur Sapru: Frankly, My Lord, I would not agree to that.

Chairman: I am sure you will tell me why.

Sir Tej Bahadur Sapru: A power like that, to my mind, is only a power of certification in disguise, and what I would say is this, that while I am prepared that you should create certain specific charges on the revenues in regard to agreed subjects which may be within the jurisdiction of the Viceroy, you should also trust the Legislature, and trust that the Legislature would be able to find the money. Why should you proceed on the assumption that the Indian Legislature will have a double dose of original sin, and that it will never be able to discharge the responsibilities which are entrusted to it?

I say that all these sums will be a first charge of second charge —whatever you like to call it—on the revenues of India. The only answer to that argument of mine can be—and it is the one answer that has been given—to ask where is the guarantee that the Indian Legislature will raise the money. Frankly, if that point is made, where is the guarantee that the Indian Legislature will not commit suicide? What I say is that you ought to depend on the common-sense, the patriotism and the sense of responsibility of the Indian Legislature. If you are going to proceed in this spirit of distrust of the Indian Legislature, in this spirit of want of confidence that it will discharge its elementary functions, then I think your constitution, however carefully guarded it may be, is foredoomed to failure.

Now, My Lord, having dealt with these sections, I will just recall to the Committee the three safeguards that were mentioned by Lord Reading last year, the safeguards relating to external borrowing, internal borrowing, and currency and exchange. So far as those safeguards were concerned, they formed the subject of a great deal of discussion on both sides, but no agreement was arrived at with regard to them. It is open to the British Delegation or to any section of the British Delegation to raise a discussion with regard to any of those safeguards or to all of them, and to invite our consent to them; but the proposition must come from the other side.

So far as I am concerned, the position which I took last year is exactly the position which I take now. With regard to the limitation suggested by Lord Reading in regard to external borrowing, I ventured to point out that the position which Lord Reading intended to assign to India under the new constitution was not going to be lower than that assigned to the various Dominions. That interpretation of mine was not challenged last year, and indeed it was endorsed. In this connection, I will remind you of what is stated in the Report upon the question of finance. "Upon the question of finance," says the Report at page 14, "Indian opinion was that even the safeguards set out in the Report went too far, especially those giving special powers to the Governor-General."

Coming back to the question of internal borrowing, as I understood it what Lord Reading suggested really amounted to this. If, after a series of deficit years, the future Minister of Finance refused to balance the budget by raising the proper taxes, and

attempted to balance the budget by raising a loan at a heavy rate of interest which might prejudice the existing security, then the Governor-General would intervene. I ventured to ask Lord Reading last year, and I do so again with great respect, that he might be pleased to tell us what exactly is his idea of intervention; at what stage and how he intends that the Governor-General in such a case shall intervene. Until I know that, it is impossible for me to make up my mind. But I venture to think that the best safeguard will arise from the commonsense of the Legislature. If it is found that a Finance Minister has been playing "ducks and drakes" with public money, well, the Finance Minister or his Government will have no credit with the Legislature and much less with the country at large, and there will not be any money forthcoming. Then I come to currency and exchange.

Chairman: Just before you leave that—because you are now coming to the next point, would you mind looking at paragraph 18 of our last Report?

Sir Tej Bahadur Sapru: Yes, My Lord, I will. Paragraph 18 to which Your Lordship invites my attention is this ——

Chairman: Wait a bit. Do not let us be in a hurry. I need not trouble you about the first sentence. What is your opinion about the second sentence?

Sir Tej Bahadur Sapru: The second sentence runs thus:—

> "It would, therefore, be necessary to reserve to the Governor General in regard to budgetary arrangements and borrowing such essential powers as would enable him to intervene if methods were being pursued which would, in his opinion, seriously prejudice the credit of India in the money markets of the world."

My answer to the question put by Your Lordship is this: I want to know first what is meant by intervention. How is the Governor-General going to intervene? At what stage is he going to intervene? What will be the machinery at his disposal for enforcing his decision? Until I know the position in regard to these questions it is impossible for me to understand what the implication of this sentence is. Now if what is intended to be meant by this sentence is that the Governor-General should have some sort of a power of certification which he might use at some stage or other, then I would very strongly dissent from it. But until I know what exactly is the significance or the meaning to be attached to this sentence I am not in a position to say whether I am prepared to endorse or whether I am prepared to repudiate the implications of this sentence.

My Lord, in that very paragraph 18 you have another sentence, and I will invite Your Lordship's attention to that with the same object again. That paragraph runs:—

> "With the same object again, provision should be made requiring the Governor-General's previous sanction to the

introduction of a Bill to amend the Paper Currency or Coinage Acts on the lines of Section 67 of the Government of India Act. They are further agreed that the service of loans, with adequate provision for redemption, by sinking funds or otherwise, and the salaries and pensions of persons appointed on guarantees given by the Secretary of State should be secured, along with the supply required for the Reserved Departments, as Consolidated Fund Charges."

Out of these two sentences, the second sentence is one which I readily endorse. With regard to the first, I think Sir Purshotamdas has dealt with the position to-day somewhat at length, but what I would venture to point out is that as a result of the discussion which took place last year it was urged that, at any rate until such time as we established the Reserve Bank, there must be the previous sanction of the Governor-General required in the case of a Bill to amend the Paper Currency or Coinage Acts on the lines of Section 67 of the Government of India Act. Now in regard to this very matter I would venture to make a few suggestions, My Lord.

I have had the opportunity of discussing the suggestions I am going to make with my friend Mr. Benthall and one or two other European representatives. I will leave it to them to express their opinions independently. I will only venture to say that I found as a result of the discussion that there was a far greater measure of agreement between their point of view and our point of view than I thought would be the case.

I suggest that we might still make provision in the Statute for the establishment of a Financial Council for the period of transition, that the business of this Financial Council should be to advise the Finance Minister in regard to currency and exchange. As regards borrowing you might have a Public Loans Board—

Chairman: I am sure you will help me, because you and I are getting to very close grips now. The Financial Council to be advisory.

Sir Tej Bahadur Sapru: To be advisory.

Chairman: I quite follow. By whom appointed?

Sir Tej Bahadur Sapru: I am going to deal with all those questions in a minute.

Chairman: Very well, thank you.

Sir Tej Bahadur Sapru: I should lay down the qualifications by the Statute of the members for this Financial Council, and I should see to it, and if necessary expressly provide for it, that the appointments shall be made independently of any political considerations relating either to India or to England, and that they shall be made solely in the interests of sound finance. I should not lay down any rule providing that a certain number of members of this Council shall be Englishmen or members belonging to any nationality; I should take any persons possessing the necessary qualifications or merits anywhere I could find them.

As regards the appointing authority, I should vest the power in the Governor-General, who should exercise that power upon the advice of or in consultation with his Ministers. Possibly at the start of the constitution you will have to make some special arrangements for bringing into existence this Council. The Governor-General might take into his confidence certain men representing public opinion, so as to start this new Council, but afterwards, whenever there was a vacancy, the Governor-General should be the authority to appoint a member of this Council in consultation with or upon the advice of his Cabinet.

Chairman: What is the tenure of office?

Sir Tej Bahadur Sapru: So far as the tenure of office is concerned, you can have three years or five years. Further than that I should give this statutory Finance Council the power to call for any information or any facts or figures relating to currency and exchange, with which it shall deal, from the Finance Department.

With regard to things that may happen—if the Finance Council gives advice to the Finance Minister and the Finance Minister accepts that advice, there is an end of the trouble. If the Finance Minister, however, refused to accept their advice, I should make it obligatory on him to lay before the Legislature the opinion of this expert Financial Council, and I should give further power to this expert Financial Council to have its views properly represented, through one of its agents, in the Legislature, and that would not by any means be inconsistent with the character of responsible government. You can find instances in various constitutions where experts are allowed to present their view of the matter without having the power to vote. When the Legislature has dealt with the question, or has refused to accept the opinion of the Finance Council, then the Governor-General comes in, and he comes in in the ordinary constitutional manner in which he comes in in any other case in any other Dominion. I should give the Governor-General the power of veto. I should give the Governor-General the power to reserve a Bill for the pleasure of the Crown. I should even have the power of disallowance vested in the Crown in England.

I am reminded by my friend here, and I ought to have added, that I should also give the Governor-General power to return a Bill with his observations to the Legislature.

Some of these powers already exist in the present constitution. Most of these powers are to be found in the various Dominion constitutions. The sum total of all these powers vested in the Governor-General should, in my humble judgment, afford the amplest possible guarantee for safe and sound administration of our currency and exchange during the period of transition.

What will happen after the period of transition is over or after the Reserve Bank has come into existence is a question which requires consideration. It may be that experience might confirm us in the belief that it is necessary to prepetuate this Finance Council. It may be that experience might show that this Finance Council

would after the bringing into existence of the Reserve Bank be found to be an unnecessary institution, and we would then make some special provision for certain powers to deal with these matters in day-to-day administration.

Chairman: I want to follow one thing. You say when the Finance Council gives advice which the Minister accepts the matter is at an end.

Sir Tej Bahadur Sapru: The matter is at an end.

Chairman: But suppose the Council gives advice which the Minister rejects?

Sir Tej Bahadur Sapru: First the Legislature comes in. Then it goes on to the Governor-General. He may return the Bill with his observations, he may veto the Bill, or he may reserve it.

Chairman: And may certify the advice. What is to happen suppose he vetoes the Bill and nothing happens, so to speak.

Sir Tej Bahadur Sapru: If he vetoes the Bill, then the Bill drops.

Chairman: But what is to happen with regard to Finance then?

Sir Tej Bahadur Sapru: The old state of things continues.

Chairman: Very well, thank you.

Sir Tej Bahadur Sapru: Finally, I submit there is the fact that the Legislature may be dissolved. That is a very strong power and one which should enable the Governor-General to ascertain public opinion in the most effective manner. That power, however, is to be used very rarely and only in extreme cases. I am not one of those who say that we are not to have safeguards in our own interests, but to have safeguards in our own interests is one thing, and to have safeguards, the enforcement of which is left not in the hands of an internal authority, but in Whitehall, is quite another thing. Those safeguards will never be accepted by Indian opinion for the simple reason that Indian opinion is not satisfied that Indian interests have always been safeguarded or protected in Whitehall. On the contrary, there is a very strong feeling which has been accentuated during the last two years and particularly during the last few weeks that when it comes to a conflict between English and Indian interests Indian interests go to the wall. Therefore, My Lord, I say that there is not one of us who is not alive and keenly alive to the importance of sound finance, to the importance of creating confidence in the investor in England and in India, to the importance of husbanding India's resources and raising proper taxation so as to discharge our obligations, but if it is assumed that the Indian Legislature of the future is going to be dead to a sense of responsibility, then to such doubters and sceptics I can only say, " Try us, and we shall prove it."

Chairman: What about the raising of future loans?

Sir Tej Bahadur Sapru: I should have a Public Loans Board to advise in regard to that matter, and if in future we borrow through the Treasury we shall be subject to all the requirements of the Treasury to which all other Dominions submit.

Mr. Pethick-Lawrence: Lord Chancellor, it has been a great pleasure to me to listen to the profoundly interesting speeches of Sir Purshotamdas and Sir Tej Bahadur Sapru on this important question of finance. I should like to preface what I shall have to say on this subject with the expression of a hope which is shared by my colleagues representing the British Labour Party, that our deliberations here will bear fruit in a measure of responsibility at the Centre, and not, as Sir Tej said he feared, merely in a form of Provincial self-government.

Returning to our immediate subject, finance is at the heart of all representative institutions. In our country it is the control of the purse which has given to our House of Commons its predominant position in our affairs. For that reason I sympathise with those who have spoken when they say that unless control of finance is secured India will have been presented with the shadow and not with the substance of self-government, and that that which has been given with one hand has been taken away with the other.

At the same time, I am sure that our Indian colleagues who have honoured us by coming all this way to consult with us do appreciate what I understand is the position of the British Government. Up to the present, the financial structure of the Government of India has been built up on the faith of British Ministers, who are therefore in a position of trustees who cannot relinquish their trust except under certain conditions. They have not merely a responsibility to those who have found the money until now, but also a responsibility for the stability and permanence of the whole structure of Indian finance. As you, Lord Chancellor, said in another connection a week ago, they feel that they are not entitled to take any risks.

Apparently, there is an unbridgeable chasm between these two conflicting loyalties, the loyalty of India to her idea of self-government and the loyalty of the British administration to its conception of trust; and, where loyalties are concerned, Lord Chancellor, we all realise that we have to tread with great delicacy and care. But, in my view, the conflict is more apparent than real, because the ultimate object of both though seeming so different, is in reality the same. It must be in the interests of every Indian that the credit of the Government of India shall stand high and impregnable. Not merely would the honour of their country be tarnished if anything in the nature of default were to occur, but a lack of confidence would involve a loss of credit which would add enormously to the cost of fresh borrowing, and in consequence be a serious check on all material progress at the very opening of the new chapter in India's history. On the other hand, it must be in the interests of this country that confidence in the financial

stability of India shall with the progress of time come to depend not on any external restraint but on the internal strength and integrity of Indian opinion.

This must be so, because when the new constitution is set up and the machinery which we have been elaborating here is set in motion, no safeguards however powerful on paper could be effective against deliberate default or even against a gradual drift towards breakdown. What we have to devise, therefore, is not a system by which India may be permanently subject to outside interference which would, of course, be most humiliating to her, but a method by which, during a transitional period in which India is gaining its own financial prestige, British credit shall help to underpin its structure. It is as though after a re-formation of a business firm the old Directors remain on the Board to strengthen the newly formed directorate.

Lord Chancellor, I will not take up the time of this Committee by attempting to pursue this general theme in great detail through all the questions with which we are naturally concerned; but there are two matters as to which I propose to add a few observations. If there are to be extraordinary powers of financial control, there is clearly only one person who can be trusted to exercise them, and that person is the Governor-General. It is equally clear that the Governor-General must act upon advice, and the question arises as to whose advice he shall take. To answer this question, it is important to realise that while the first purpose to be achieved by the financial safeguards is to promote sound finance, the second purpose, which is equally important, is to retain and promote confidence. The person whose confidence is to be maintained is not the Government of India, is not the Home Government, is not even the City of London, but as Sir Purshotamdas has said, the investing public, both at home and in India, or rather both in India, and in the large world outside. Whomever the Governor-General appoints to advise him and however they are appointed, it seems to me to be essential, therefore, that they shall be in close touch with himself, with opinion in India, and with those in the City of London, qualified to speak on behalf of the investing public. I listened with the very greatest interest to the sketch put forward by Sir Tej Sapru, and his proposals certainly appealed to me *primâ facie* as a basis for building a practical scheme. They of course want to be examined in detail and one would wish to hear what may be said with regard to any imperfections which it may be considered are involved. But whether that scheme or another one be the one finally chosen, for my part I feel it should be quite possible to find a method of providing advisers to the Governor-General which shall at once satisfy the honour of India and meet the requirements of sound finance and confidence of the investing public.

The other question to which I propose to refer—bearing in mind, Lord Chancellor, your very wise advice at the beginning—is the question of the exchange which has been already referred to in-

cidentally by Sir Tej and at some greater length by Sir Purshotamdas. When first I had the honour of joining this Committee in July, I feared that the divergent views on this question of the exchange were impossible of reconciliation, because no formula can ever be found which will make 18 equal to 16. I am aware that to-day there are still considerable differences of opinion on this question, but I venture to think that the events of 21st September last have made a profound difference in the situation. When this country went off the gold standard, the Indian exporters of wheat, cotton and jute got in practice what they wanted. For the same reason the Indian manufacturer got his protection against his Japanese competitor. The issue to-day, therefore, is mainly one of honour and prestige; and highly important as these are, they are not so stubborn as the principles of arithmetic. Most of the self-governing Dominions have elected to pin their faith, for the present at any rate, to sterling, and several important European countries have practically taken the same view. In the present circumstances, therefore, it seems to me that an honourable settlement on this matter also ought to be within reach.

My Lord, I have the feeling that, during these weeks that we have sat here in this Committee, we have been getting steadily nearer and nearer together on all these practical issues that have been raised. Therefore, in concluding, what I have to say, I would press most earnestly those who have the responsibility, to devote themselves patiently, whole-heartedly, and sympathetically to continuing to explore the whole situation.

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(*Lord Sankey here vacated the Chair, which was taken by Lord Reading.*)

Chairman: I have some observations to make to you, which I hope to keep short. Some of the remarks of Mr. Pethick Lawrence, which I think were undoubtedly designed to be, and in fact were very helpful, make it unnecessary for me to travel into all the subjects to which he referred. I would desire at the outset to direct your attention to what seems to me to be the most important matter we have to consider now. It was mentioned by the Lord Chancellor this morning and was taken note of by speakers who followed. The position at the moment in the financial world is so confused and so difficult, that what has been said does not require any amplification from me, but I do think we must bear in mind that India's finances can never be free from some dependence like all other national finances on international relations and international finance. It is quite impossible to discuss Indian finance without taking into account the general question of international finance, although I quite agree that in regard to a vast number of the matters with which we are dealing, the Indian financial situation particularly in its constitutional aspects, presents its own particular facets for our consideration. If you bear this in mind I think it becomes

apparent that it is most difficult to discuss with any advantage the financial situation at the moment or even to arrive at conclusions upon what should be done in the immediate future. That seems to be really impossible at this moment, or at least undesirable at this moment.

A number of events have happened since we discussed finance last year, and some of them are important events, such as our going off the gold standard, the changes that have been made in India in consequence, and also the statements that have been made both by the then Secretary of State, Mr. Wedgwood Benn, who is here now, and by the Prime Minister, in relation to Indian finance.

I think the most important thing that we have to bear in mind in all these considerations is that, so far as I know, there is no precedent in the history of any two countries for the situation which exists between Britain and India in relation to finance. You get very little assistance from referring to the position in regard to other countries, or even other Dominions, because here the situation is different. It dates, no doubt, from the East India Company's position at that time, and since then the position of His Majesty's Government, by virtue of the position of the Secretary of State and of the Secretary of State in Council, to which reference has been made by Sir Tej Bahadur Sapru in calling attention to particular sections of the Government of India Act. Those relations make the position between India and Britain one of very close interdependence.

There is one general observation which I can make which I think will have the concurrence of everybody here. It has already been referred to by Mr. Pethick-Lawrence, but I should like to try to put it, if I may, in one simple sentence. There is one condition which must, to a large extent, dominate all that we are considering at the moment, and that is that it must be the purpose of India, just as it must be the purpose of all of us who are trying to arrive at agreement in these matters, to maintain the confidence of the investors in Indian Government securities. That must be done, for otherwise India will suffer immeasurably and with the result that not only her financial condition will suffer but all those who have to provide the revenues by taxation or otherwise will suffer also. It is of the essence of the matter, it seems to me, that we should strive to maintain the credit of India as high as possible, in order that the borrowing which has to be made—and which must be made, as anyone who has any knowledge of the Indian financial situation realises—either to meet maturities or for other purposes in the course of years may be made at the lowest rate at which you can borrow, for the lower the rate at which you can borrow, the better it is for India and the less she has to pay.

Now, having said that, I would myself deprecate discussion as to the present situation; I do not intend to follow the observations that have been made. They have been brief; I am not making any complaint with regard to them, but, to my mind, it would be invidious to attempt to deal with them. All I will say is that nothing that has transpired since our last meetings, since we

discussed these matters at the end of last year has changed my opinion in regard to the safeguards that must be required in arranging now the constitutional position in regard to India's finance.

It is quite true, as Sir Tej Sapru has said, that there are provisions in the Government of India Act which make charges—he said either a first or second charge. I do not think really that the precedence affects it at all. The obligation is placed upon India by the Statute to provide the expenditure out of the revenues, and the revenues must be dealt with for the benefit and the purposes of India. I raise no objection to that. I would, however, make one observation to you upon it, but I do hope we shall not, here, at this Conference, fall into the error which certainly I have seen in some press comments, especially those which have come from India, that because some declaration or provision that may be required and has been put forward at this Conference would have some advantage to investors in Great Britain, therefore it cannot be that that declaration or provision is in the interest of India. That I submit is a complete falacy, and very little examination is necessary to demonstrate it. If you bear in mind what I think would have the unanimous approval here, that what we want to do is to maintain in dealing with Government loans and matters of that description the confidence of the investor, the fact that something that you are doing may help the investor in this country who has placed his money in sterling loans, and that it may stop a diminution in value which otherwise might occur, by some provision which you are going to make in the constitution, does not mean for one moment that that provision is not in the interests of India. It is obvious that they are consistent, that is that the interests of India would be consistent also with the interests of investors here. It seems to me to follow so obviously that I do not wish to labour it. I only desire to draw attention to an error which has certainly crept into a good many of the press comments that I have seen from India. The main purpose being the establishment of confidence, what has to be determined also is what steps could be taken and what the effect of those steps would be upon the investor in this country, in India and elsewhere. That of course is when you are dealing with the credit and the stability of the financial situation of the Government of India, which means India.

Now may I at the outset also make just one observation following what fell from Sir Tej Bahadur Sapru at the outset of his remarks, and was then followed by Mr. Pethick-Lawrence? I had occasion recently to make a statement with regard to it and I only repeat it now because from what Sir Tej has said just now there seems to be some notion that a change is being made in the situation now as compared with what it was when we first started the resumption of the Conference here. I want to state that for myself I maintain quite rigidly the view that I have expressed before that, whilst in favour of Provincial autonomy, I am also in favour of responsibility at the Centre of the Federal Government

which we are seeking to set up, and in my mind nothing that has happened has caused me to change those views. In my opinion they are part and parcel of the main principles upon which we are engaged at this moment.

Now I would desire to call attention, only for a moment or two, because I do not wish to detain you at any length, to some of the observations made both by Sir Purshotamdas Thakurdas and by Sir Tej Bahadur Sapru, especially those referring to the sections of the Government of India Act to which Sir Tej referred. I find the greatest difficulty at this moment in laying down any canons of financial administration in India in view of the situation as it stands, and certainly I would like to get rid of one subject, for myself at any rate, which has been referred to, not discussed at any length—and I quite appreciate the discretion of those who have spoken in not referring to it at any length—and that is the matter of currency and exchange. The view I took at the earlier stage was that currency and exchange should be dealt with by the Reserve Bank which should be established on non-political lines, and which, when established, would have the management of currency and exchange. That does not mean for one moment that it fixes the ratio. The ratio would be fixed by the Legislature, as it is now by the Act of 1927. That fixed it. But the management of the currency and exchange are quite different things, and the object of entrusting them to a Reserve Bank is that you may be enabled, by means of a non-political body consisting of experts, charged with the duties and also having the necessary powers, to preserve the stability of exchange and currency, and thus to maintain and even enhance the credit of India; and so far as I can see there is no way of dealing with that except by means of this Reserve Bank. Whether some temporary provision may be made by introducing a Council, assuming that you have once established your constitution, and that Council may be consulted and may express its views, I shall not go into at this moment, because it does not seem to me that that is an essential part of the management of the currency, although it may be very useful, as it certainly often is, to bring others in who may have their views in order that they may expound them and put them before those who are responsible. I do not propose to say a word further in regard to currency and exchange.

In relation to the external and internal loans, there again as to external loans I made my position clear last year, and I do not propose to re-state what I then said. As regards the internal loans, I agree that the statements that I made last year were not very definite as to the remedy that was proposed, and I think Sir Tej was perfectly right in saying that there was a considerable amount of discussion and that nothing definite was arrived at with regard to it. The only concern that I have with regard to internal loans is to protect, and to protect for the purpose of preserving financial stability and credit against the raising of loans at bad rates of interest, which would affect, the moment they were raised, the credit of India notwithstanding that they were internal loans.

For example—I only give it as an instance, and not for a moment suggesting that it will take place—suppose you have been raising loans here at 5 per cent., 5½ per cent., and even 6 per cent., and that it was proposed to raise the loan in India. Let me assume for a moment—I am not suggesting it will take place, but merely suggesting it for the purpose of an example—that it is raised at 8 per cent. The effect of that must be to reduce the credit of India in the eyes of British investors, and consequently to make some larger amount payable than would otherwise be payable if a loan of that character had not been raised.

The only intervention that I would desire in that respect would be to see that nothing of that sort takes place. I gave as an instance an unbalanced Budget, and I think I was a little misunderstood with regard to that. I did not mean one particular Budget; what I mean as I explained later, was the pursuit of a certain policy. I did not suppose for a moment it would be pursued, but if it was it would be necessary to take some stand in order to prevent the credit of India being most seriously affected. Personally, I should be satisfied in that regard if the assent of the Governor-General were required for the purpose of an internal loan. That does not seem to me to be unreasonable. In the ordinary course of events, if there is no serious risk of impairing credit, then, of course, the Governor-General would give his assent; but this, as it seems to me, would give some power of checking anything in the nature of financial administration which would impair the credit of India. That is all that I want with regard to that.

Now, Sir Tej Bahadur Sapru has referred to certification, and here I confess that I am not in accord with him, because it seems to me that the power of certification must be preserved, at any rate at present. I was struck, during the course of the argument, by his remarking, after having referred to the sections of the Statute, "What more could be required?" What it seemed to me he was leaving out of calculation altogether was the possibility that the Legislature might, for some reason, refuse to vote the taxes. Now, that is not an impossible state of things. To my great regret, it arose certainly on one occasion when I was Viceroy, an occasion when there was no real question of finance involved at all. There was no point of issue between us, no real dispute, but there was at that time some discontent with what was being done by Government, and, as a constitutional démarche, because really it was nothing else, the Finance Bill was rejected by the Assembly. Now, what is to happen if that takes place? I notice Sir Tej says things will go on as before, but they could not do so.

Sir Tej Bahadur Sapru: I should like, if I may, to make one suggestion, because I want to have the benefit of your advice upon it. Let us suppose you have the provision in the constitution that if the Legislature turns down the whole of the Budget, or refuses to raise any taxes, last year's Budget would come into force? There are precedents for that.

Lord Reading: I agree, but that would not meet the point that I have in mind. There are two things which must be borne

in mind. One is the restoration of demands which are made, and there is certification. Let me point out why. If the Army and external relations—to refer only to these two—are reserved to the Viceroy, he must—to use a phrase which I think was employed by Sir Tej Bahadur Sapru earlier in the discussion—have the power to implement the obligations that are placed on him. It is necessary to provide the money. If you have entered into a contract for the year, it is no use saying that, unless equally you give him the power to raise the money. He must have that. Of course if the Legislature is working in agreement with him, which we hope will be the case, the result will be that no difficulty will arise. But suppose this, for example, and you cannot leave it out of account, especially as I say it has happened once. During my time there were two occasions on which I had to certify. The one was a much more controversial point, and I am not referring to that, but the other that I have in mind so definitely is when it was simply rejected as a constitutional point, just to take up that constitutional position. The consequence was that, very much to my regret, I had to introduce the Bill as a recommended Bill for the purpose of certification if then rejected. It happened as those of you will remember who were there taking part in the Assembly. It happened and the Bill went through in the ordinary way; no difficulty ever arose about it at all and no question was ever raised that the taxes were not payable or ought not to be paid because they had not been voted by the Assembly but were certified merely by the Governor-General.

Now if there were not powers of this kind, which are very necessary as it seems to me, it would be impossible for the Governor-General to implement the obligations that are imposed upon him. It is not much good referring to other cases for this purpose, because, as I ventured to observe to you before, the situation is quite unprecedented. You will not find in any constitutions provisions of this character, it may be because the conditions do not exist. But here if you have the obligation to do a thing, there must be the power of being able to implement it either by asking for the further demands, or, if it becomes necessary, by certification. That it should never be resorted to would obviously be the best state of things that can happen; but the mere fact that there is the power inherent in the Governor-General by the constitution, if the condition should ever arise, at any rate will enable him to go forward and do what is necessary in order to carry on the duties imposed upon him.

Of course, it may be said, and I think it was certainly implied by the references that were made during the discussion to-day, that the power is already there if you have sections of the Statute, such as are now in the Government of India Act, because that is analogous to putting the expenditure on the Consolidated Fund. But then, of course, as all constitutional lawyers and those who have studied the financial conditions of Government know perfectly well, that is rather a figure of speech than anything else, the Consolidated Fund. It really means that the Governor-General

in the case of India, has the power of raising the money; that is of using the money from the funds that have come in from the revenues without having to go to the Legislative Assembly to have them voted. In other words, if he was responsible, let us say, for 47 crores expenditure, taking the figure as it now is for the Army, he must be able to find somehow 47 crores out of the revenue. He has not to have them voted on the assumption which we are at present discussing and on the system which has hitherto prevailed, but he draws them from the Treasury as the money comes in. That is to say, in other words, to put it quite simply, he has to dip into the till to take that money, but has not got to get the previous consent of the Legislature; but that is all that is meant by saying that a charge is on the Consolidated Fund. It means no more than that, and it gives no more security than that. If the revenues are not there, then of course he has not the money and his Consolidated Fund is of no use. I think you must not lose sight of all these considerations if you are putting upon him by these means certain obligations to defray the expenditure on Army and External Relations and so forth.

There is very little else, I think, that I want to refer to to-day, as I certainly am not anxious to take up much time in discussion. I took up a considerable amount of time when we last had this before us; but what I am most anxious about is that we should realise—and I would press it upon you very seriously—the situation as it is at the moment, and the undesirability of trying to be too precise at this present period during transition and during the present conditions of finance, not only of India, but of this country and of the world generally. I think, of course, that we should do everything we can to strive to arrive at agreement in respect of it, but I cannot help but make this observation, and I make it with a full sense of its responsibility—that if it were to be stated by Government at this present moment that the full responsibility for the finances of India are to be transferred from the present situation and the present control into that of India and a responsible Government set up there, I would hestitate very much in prophesying what the effect would be upon the financial position of India, but I do not hestitate in saying that it would be disastrous. It is not because of the fear of anything in India; I would beg of you to get that out of your minds; it is because the situation is so bound up with our own here—that is, in relation to investments that are made and responsibilities here in regard to Government loans and so forth. Roughly, the amount of money invested is somewhere about 350 million pounds sterling. The figure may not be exactly accurate, but it is near enough for the purpose, and in addition large sums have to be found annually in sterling. Those sums have got to be raised in sterling and if anything were done which frightened people here, made them lose confidence, the result would be really disastrous to the finances of India at the moment. I would press upon you not to get into your minds that that is because there is no confidence in India. It is not that. It is because the investing public here certainly

places its money, it is true, in Indian loans, relying upon the revenues of India to defray them, but also because it knows that the control, certainly hitherto, has been in the Secretary of State in Council, as is shown by the references that were made, and that it is essential that you should not disturb that, certainly at this moment when conditions are so difficult with regard to finances all over the world. I would beg you to remember that. I am not speaking for a moment as a member of the Government—I have no Government responsibility—but I am speaking my own views, and my own views in these matters are based upon considerations which I would beg you to believe are, I am convinced myself, in the best interests of India, with the desire of trying to reach some conclusion which would be agreeable to India and to ourselves, but which would maintain the confidence of investors in Indian finances and would, above all, consequently retain unimpaired the financial credit and the stability of India.

(The Committee adjourned at 4-10 p.m.)

(The discussion on Financial Safeguards is continued on page 1197.)

PROCEEDINGS OF THE FIFTY-FIRST MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON WEDNESDAY, 25TH NOVEMBER, 1931, AT 11-0 A.M.

Discussion on Order of Constitutional Development.

Mr. Wedgwood Benn: Lord Chancellor, some of us would like to discuss such questions as the future of this Committee itself and the actual time table to be adopted by the Government in carrying out the proposals of the Committee. If you would allow some time for that before the Reports are made I think it would be a good thing, because naturally we should desire that any opinions expressed in this Committee should be embodied in the Report, so that they may be reported to the Plenary Session.

Chairman: Then will you go ahead now, please?

Mr. Wedgwood Benn: I will ask Mr. Lees-Smith to do so, although I think this would come better when we have finished the financial discussion, but before we make our final Report to the Plenary Session.

Chairman: We had better get it through now.

Mr. Lees-Smith: I am ready to start the discussion on this subject now, but I should like an opportunity for other members who may have something to say to contribute at any rate a few words on it, and I think that would come better, probably, after the discussion on finance. However, if you would not mind breaking into the discussion on finance now, I should like to say what I have to say.

Chairman: I think you had better say it now, Mr. Lees-Smith, I am in great sympathy with you, and I am quite sure that what you have to say will be very helpful.

Mr. Lees-Smith: I should like the Committee to realise, that although this has come rather quickly, I think that we are now on the most vital subject that this Conference has left to discuss, and therefore I should not like the fact that it is suddenly interjected into the other discussion to make the Committee think that this is by any means a secondary issue which is being decided.

I do not think it will take long but I think what will be said is exceedingly important.

Chairman: Yes, I am sure anything you say, Mr. Lees-Smith, is. The only thing is, if it is so important, as I am sure it is, do not you think we had better have the Prime Minister here?

Mr. Lees-Smith: Certainly. Well, we might decide that later, but I should like the Committee to know what I have in mind before we discuss that.

Chairman: Very well. I am very much obliged to you. What I will do is this: if you will go on now, I will convey the remarks to the Prime Minister. He is a very busy man and perhaps it would not be fair to ask him to come. At the present moment he is engaged in the Cabinet. Will you go on now please?

Mr. Lees-Smith: Lord Chancellor, the question that I want to raise is the question which was referred to in a number of the speeches yesterday but not fully developed. That is the question of " When is this federal structure that we are now discussing going to be brought into being? " I think, if you will permit me, a short discussion on that will in fact shorten the discussion on the Reports; because if that were clear in the minds of the Committee I think the discussions on the Reports would go through a great deal more easily than they may under present circumstances.

I would say this to the Committee: that at this present moment the prospect is that this Conference is going to end in failure, and I think that this short discussion that we shall now have is our last effort—the last effort any of you can make—to save it even at this moment. I would warn the members of this Committee not to wait for the Plenary Session, but, if they have any remarks to make, make them now. The Plenary Session is not a discussion; the Plenary Session consists of a series of speeches in which each man stakes out his position and the Government replies at the end; but there is no discussion in the sense that we know it round this table in this Committee.

I do not know. These are issues which lie on the knees of the Committee and on others, that we are in a very tragic position. There is in reality no unbridgeable difference on any of the issues that have been discussed on any Committee; and yet, owing to the fact that we do not get together sufficiently closely, this Conference is on the verge of disillusionment. If I may refer for a moment to another Committee—I cannot enter into it, but I do

not think there is an unbridgeable difference, even on the communal questions; and I would say this, that it is generally understood that the Government will bring into being at an early stage—at as early a stage as possible—Provincial autonomy. Now that cannot be done unless a settlement of the communal question is first of all reached. If the settlement of the communal question is reached for that purpose, it can then present no difficulty, or no insuperable difficulty, for the purpose of establishing a Central Government; and for our discussions here at this moment we need not I think deal with the communal question any further.

May I then say what has been the impression made on my mind by the discussions into which we have entered in the last few days? There was a certain unwillingness to enter upon these discussions in the last few days on the Army, on finance, and so on. I think anybody who has heard them will say that it was most fortunate that, owing to the action of this Committee, those discussions have taken place. They have been most temperate; they have been most guarded; they have been most creditable to everybody; and they have shown that the differences between what I might call an official Government view and the Indian view are far less than they appeared before these discussions took place.

That has been one of the results of this discussion, and I do say that on the discussion that we have had in the last two days—discussions on the question, so to speak, *vis-à-vis* the British Government and Delegates from India, certainly no unbridgeable differences have revealed themselves. What then is the question above all others which is the difficulty and on which it may be that our efforts may break down? It is this question: When is this Federal Government to come into being, and is it to come into being simultaneously with the Provincial Governments or later than the Provincial Governments? That is the question that has to be settled, and that is the question on which this Committee has the right to express itself.

That is the question on which I think the Government ought to hear the views of this Committee before a final statement is made, and I hope that the Committee will express itself now when it has got the opportunity, because I warn it that if it does not do so now it will not have an opportunity at the Plenary Session to express itself. There are two alternatives presenting a genuine difficulty to everybody. What are the two alternatives? One of them is this. The difficulty as I understand it is that Provincial autonomy can be brought into existence in perhaps eighteen months or a couple of years—some such period as that—but the Federal Government for various reasons cannot be brought into effective existence, with every effort in the world, in less than about three years or more. That is a genuine difference. It is not a question between England and India. It is a genuine administrative difficulty and it ought not to separate us at all. There is therefore a gap. Now there are two alternatives. One of them is that Provincial autonomy shall be established as early as possible and

that then the Federal Government shall be created at a later date. The other alternative is that the two should be established as far as possible simultaneously. It is between those two alternatives that a choice has to be made. Lord Reading sometimes speaks in his personal capacity and he tells us that he has no Government responsibility. May I therefore give my own views on that subject? I have discussed it with a great many members of this Committee and I am convinced myself that in spite of its difficulties the second alternative—the alternative of simultaneously bringing into being Provincial autonomy and Federal responsibility—is the safer of the two.

Now I am afraid that if the first alternative is carried out, if the Provincial Governments are established before the Federal Government, that they will be established amidst suspicion, that there will be a belief that the Federal Government is postponed into the indefinite future, that they will not be established with goodwill, that they may be wrecked before they are begun, that they will never have a proper chance of success and circumstances may then arise as a result of that, as a result of the general suspicion and ill-will, which will postpone the Federal Government to some indefinite future.

Now what are the disadvantages of the other alternative? The other alternative is that the two should be brought into being more or less simultaneously. The disadvantage is this. It will mean the establishment of Provincial autonomy at a later date than it could be brought into being taken by itself. It will mean that India will have to wait, and there is apprehension that India in waiting may grow restive, and that difficulties will occur on that account. With regard to that I would say this. I myself would hope and would believe that India would not be restive if it knew that the delay was due to the work that was being carried on all the time to bring Federal responsibility into being. And I would suggest this. I have a profound belief in the method of settling the problem of India by conference. I would suggest that the method of conference continue, that practically this Committee here should for this purpose be kept in being, that it should work in India with the Government of India, and that the Government of India should continuously work out the system of Federal responsibility and use its efforts to expedite it so that India would know that it was going to be brought into being at the earliest possible moment, and that its own trusted leaders were in continuous consultation. I cannot believe that in those circumstances India would be so disturbed that progress would be rendered impossible.

That is what I think should be done. This is so important. As I say, I believe this is our last chance of saving this Conference from disillusionment. It is so important that may I put almost dogmatically what is my opinion on the subject. I should like this Committee to pronounce in favour of the simultaneous proposal—the two together. I should like it to indicate—those who can indicate—that if an effort were being made in co-operation with

Indian opinion to work out Federal responsibility that the delay which that would mean in Provincial self-government would not lead to difficulty in India. I should like this Committee, or some similar Committee—broadly, this Committee—with the necessary additions, to continue in being and consult with the Government of India, so that the Indian problem would finally be settled by conference. I believe if that is done—and I do warn the members of the Committee they have to decide this now—if they do not speak now I doubt whether during our lifetime we shall speak to each other face to face again; we have to do it now at this moment. I think if this were done it is the last hope that we have of settling this Indian problem on the lines which we intended when this Round Table Conference was first called over a year ago.

Sir Tej Bahadur Sapru: I would like at the outset to express our sense of obligation to Mr. Lees-Smith, who I take it has spoken not only on his behalf but on behalf of his section of the Delegation. Speaking for myself, and for this block on this side, I may say that we deeply appreciate the spirit which has prompted him to speak in the manner in which he has spoken this morning. Like Mr. Lees-Smith, I stand also irrevocably committed to the method of conference. Although I am aware that a certain section of politicians in this country have already passed sentence of death on this Conference and on this Committee, still I think.....

Chairman: It takes a lot to kill me.

Sir Tej Bahadur Sapru: Yet, I think, Lord Chancellor, you will agree that it is only due to a person on whom the sentence of death has been passed that he should be allowed the final chance of saying what he has got to say.

Chairman: I am bound to say it usually is done; Yes.

Mr. Jinnah: But it does not change the sentence!

Sir Tej Bahadur Sapru: I venture, therefore, to say a few words as one who knows that our days here are numbered and who feels, like Mr. Lees-Smith, that it would be a tragedy if we were to go away without having achieved anything substantial, more particularly when, as Mr. Lees-Smith very rightly pointed out, the differences are not at all unbridgeable. Indeed, I would very strongly contest with anybody, high or low, who would maintain that the distance between one section and another is unbridgeable.

The main points on which we assembled this time to come to some conclusion were first of all Federation with responsibility at the Centre, and, secondly, corresponding responsibility in the Provinces related to the Centre. Although no official announcement has been made yet as to what is going to be the future constitution for India, I shall proceed on a similar assumption to that made by Mr. Lees-Smith this morning, that the air is thick with the words Provincial autonomy.

Now, let me make an absolutely clear and definite statement in regard to that matter. So far as I am concerned, I am an irreconcilable opponent of Provincial autonomy divorced from res-

ponsibility at the Centre. I am not prepared to support it, nor am I prepared to advise my country to accept Provincial autonomy divorced from responsibility at the Centre. That is one of my deepest convictions, a conviction which I can trace back to my official days.

I refuse to believe, in the first place, that it is possible for you to give us genuine Provincial autonomy, an autonomy which will make us independent in some vital matters of the control of the Central Government or of the Great Mogul, the Secretary of State for India. But, assuming that your legal advisers can devise some sort of formula which will give us not what I would call a bogus Provincial autonomy, but a genuine Provincial autonomy, I would ask you to approach the question from this point of view. You yourselves have said repeatedly on public platforms and in the Press that it is no use giving to a people a constitution which they are not prepared to work. Have you satisfied yourselves that there is any considerable body of men in India at the present moment who are honestly prepared to work Provincial autonomy or who feel sufficiently courageous to work Provincial autonomy in the midst of what I imagine to be a great opposition in my country to a system of Provincial autonomy in advance of responsibility at the Centre? It is all very well for our friends to say that we must hold our souls in patience, that Provincial autonomy will inevitably lead to responsibility at the Centre. Frankly, I am in no mood, and I do say many of my countrymen are in no mood, to accept assurances of that kind. We are not going to allow our future to be prejudiced by accepting Provincial autonomy at this juncture, when we know that political opinion in England can change so rapidly as it has changed during the last few months; when we know that the number of our friends is very limited, that the number of our opponents is very large, that people still think of India as they used to think in the eighties or the nineties of the last century, or even ten years ago. Therefore, let me give this warning in the friendliest but the firmest possible language: that those of us who have stood by the Government in critical times, who believe in ordered government, who are anxious that India should be saved from a period of strife and turmoil and that we should be allowed to settle down to constructive work, will feel, and legitimately feel according to my view, that they have been let down by this Government. I hope things will never be allowed to reach that pass.

Well, Mr. Lees-Smith has raised the question of time. I entirely endorse his remarks; but if India can be genuinely convinced that the machinery has been set up, that the machinery will be constantly in working order, that something is being done to achieve the end which we all have in view, India will not be restive. On a point like that I believe I have got no right to speak with the authority with which Mr. Gandhi can speak. Once you convince the people that you mean business and that you are not going merely to feed us upon hopes which may be realised three years hence or thirteen years hence or longer, I think there is

enough patience in the country to approach the future in a spirit of confidence. But let there be genuine co-operation, and do not tell us that in your language and in your dictionary co-operation means only co-operation when we accept your views as the final views, when we accept that what you consider best for our interests is really the best, but let a true conception of co-operation arise. Co-operation means and ought to mean that we ought to be able to adjust our differences; that we ought to be able to find a common ground; that neither of us should feel that his views are being imposed upon the other. I am not a non-co-operator; I have never been a non-co-operator. Do not give me a chance of saying that it is the people of this country who have non-co-operated and taken a leaf out of the book of Mr. Gandhi, who has shown a spirit of co-operation on this occasion, be it said to his credit.

I, therefore, speak as a friend, and if I have spoken with a certain amount of feeling, I will beg you to assume, I will beg you to rest assured, that I have a very vivid idea of the dangers that you may be cultivating by manœuvring us back into what I call the Simon recommendations. Let there be no such feeling in my country. Let us not go back with that impression; and remember it is up to you to realise your responsibility in the matter, to see that your friends are not wiped off the picture. That is all, My Lord.

I would say only one word more. It should not be understood that I accept that a three years period is necessary for working out the details.

I am open to conviction.

Chairman: What do you think it should be?

Sir Tej Bahadur Sapru: Let your experts satisfy me that a three years period is required, and I will accept it, but if it is a question of choice between accepting Provincial autonomy now and waiting for three years, at the end of which time we are to get the whole thing, I would much rather wait for three years than accept Provincial autonomy now. We have been told that there is a very great anxiety that the Government here should give proof of their earnestness. I appreciate that anxiety, I value that anxiety, but I would only give this warning, that in attempting to show your earnestness you may do something which will make your position and make our position worse. That is all.

Chairman: I really cannot have a number of speeches on this for this reason. I have seen a letter* in the newspapers to-day signed by a number of ladies and gentlemen and I shall assume that they all agree with what Sir Tej Sapru has said, and I shall so report to the Prime Minister. It is no use everybody speaking.

* The following is the text of the letter:—

"In view of the situation that has developed at the Round Table Conference and the repeated attempts during the last few days by members of the dominant political party in Parliament either to bring the proceedings of the Conference to an immediate end or to bring pressure to bear upon

I am going to read out the names. Sir Tej Sapru has just made his speech, Sir Chimanlal Setalvad is not on this Committee. I assume that he agrees. Sir Cowasji Jehangir is not on this Committee. I assume he agrees. Sir Phiroze Sethna is on the Committee. I assume that you agree?

Sir Phiroze Sethna: Entirely.

Chairman: Mrs. Subbarayan, I think you agree?

Mrs. Subbarayan: Yes.

Chairman: Mr. Sastri, I think you agree?

Mr. Sastri: I agree, but there are one or two remarks I should like to make.

Chairman: What are they?

Mr. Sastri: If there is a danger, My Lord Chancellor, of the step that Mr. Lees-Smith has spoken of being taken by the Government, and Provincial autonomy being introduced in advance of responsiblility at the Centre, I should like to point out one grave danger there is of the country being not at all willing to accept it. I speak with a due sense of responsibility, and as I often do, I shall have the consolation of having spoken the blunt truth, even though it be unpleasant, to those whose habit it is only to listen to that which is pleasant. My Lord Chancellor, government

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the Government not to make any declaration at the Conference itself, but to declare their policy in Parliament, we desire to issue the following statement:—

(1) It is our considered opinion that no political party of any standing in India will in the slightest degree favour the introduction of provincial autonomy as the first instalment with a mere promise of establishing responsibility on a federal basis in the future.

(2) The Conference was not in our opinion called for this purpose, and none of us would have taken the trouble to come to England to achieve merely provincial autonomy, which was, indeed, recommended by the Simon Report. We think in the first place that no genuine provincial autonomy can be established without responsibility at the Centre. Even if it could be established, we are clearly of the opinion that no party in India will be prepared to take it. And if it is intended to rely upon the support of any particular class or any minority among the people of India for the working of 'provincial autonomy', then we think that the position instead of being improved will become one of great complexity and instability, and will give rise to a situation which in the best interests of both countries must be avoided.

(3) If His Majesty's Government intend to take this step it must be understood that it will not be with our consent but wholly contrary to our advice, and the Government must be prepared to take full and sole responsibility for their action.

(4) We claim the early fulfilment of the declaration of His Majesty's Government made on January 19 last, which was explicitly reaffirmed only a few days ago by the Prime Minister on behalf of the National Government. A mere reiteration of it in a fresh declaration or in the preamble of a Bill for provincial autonomy, leaving the establishment of responsibility at the Centre to some future date, will receive no support from us and will be strongly resented in India as a complete breach of faith and as being wholly inadequate to the needs of the country."

in India is becoming more and more difficult. Strong measures may have to be taken in more Provinces than one, and if at this moment Provincial autonomy is granted in full to the people of India, there is no means of avoiding the suspicion that the present Rulers of India, having found their task in the Provinces exceedingly difficult, are anxious to shunt it off on to the shoulders of the chosen leaders of their own people. That would be an exaggerated charge, but we know that in times when political excitement runs high, charges are apt to be exaggerated, but if there is an element of truth in that, I should think that wise Rulers would shrink before they incur that charge. My Lord Chancellor, the danger further is this. If Provincial autonomy is granted in advance of responsibility at the Centre, there is every probability of these difficulties to which I allude being infinitely aggravated by the circumstance that the Centre is still unreformed and continues to irritate the politically-minded classes in India.

I am afraid I cannot continue for a few moments.

Chairman: I will come back to you in a minute, Mr. Sastri. I am going through the list. The next one is Mr. Ramachandra Rao. He is not a member of this Committee. I assume he agrees with Mr. Sastri. The next one is Mr. Mudaliyar.

Diwan Bahadur Mudaliyar: If you will permit me, I so rarely take part in the debates of this Conference, that I think I would not be trespassing on the indulgence of this Committee if I say a few words. I want to say this. The representative character of many of the Delegates at this Conference has been questioned, but I stand in the fortunate position of being able to say that I do represent a political party in my own country, a party which has been constantly referred to in debates in both Houses of Parliament in this country, and a party which has consistently co-operated during the last eleven years in working such a political constitution as has been open for Indian politicians to work in my country. I speak now on behalf of the non-Brahmin Justice Party in Madras, and I want to make it perfectly clear what the views of that party are, both because I am in close association with the leaders and followers of that party in my own country, and because during my stay here I have kept myself equally in close contact in correspondence, both by letter and by cable, with the views of my colleagues at the other end. I want to state that I agree almost entirely with what Sir Tej Bahadur Sapru has stated, that we as a co-operating section will find it almost impossible to work the scheme of Provincial autonomy divorced from the element of responsibility at the Centre.

If I might put it in perhaps a little different manner from that in which the Right Honourable Mr. Sastri has put it, it would be unfair to the Provincial administration to impose on it the consequences of quelling any agitation that is bound to arise owing to dissatisfaction at responsibility not being introduced at the Centre. If I were to go back to-morrow to my Province

and were to take up the responsibility of Provincial administration, it would be an intolerable burden on me or on my party to put down an agitation for which we are not responsible, an agitation which we are also bound to say is not illegitimate, an agitation for responsibility at the Centre. Therefore, I feel that a mere announcement of Provincial autonomy, or a Bill to promote Provincial autonomy without simultaneously providing for responsibility at the Centre will fall flat in the country, will put men like myself who are anxious to co-operate, in an absolutely bewildering and hopeless position, and will in fact wipe us out of the political picture if we do not take care of ourselves. It is not fair to the co-operating section, to those friends of the Britishers, to those who have tried to work the institutions you have given to us in the face of odium and risk. It is not fair to us that you should put us in that position. What will they say if we go back? They will say that one result of the Round Table Conference has been, as in fact was hinted on the last occasion, the separation of Burma and the acceptance of the Simon Commission Report.

I dread to think of the consequences of that attitude on the part of my countrymen, which at the same time I am bound to say I cannot reasonably criticise. I would, therefore, venture very earnestly, even at this eleventh hour when a feeling of despondency has been created even among optimists like myself, to urge that the acceptance of the alternative put forward by Mr. Lees-Smith and supported by Sir Tej Bahadur Sapru is the only course which can save my country from anarchy and chaos. I believe that as a co-operator it is my duty to place this view quite frankly before the Government, on my own behalf and on behalf of my party. I may add that the Delegates and certain other gentlemen who belong to my party and who are in London have been consulted by me and we have had a discussion, and they entirely support me in the view I have just put forward.

Chairman: Thank you very much, Mr. Mudaliyar; we are much obliged to you. The next gentleman is not a member of the Committee; he is Mr. Jadhav, who, I believe is a Mahratta representative. Then we have Mr. Tambe, and then my old friend Mr. Joshi. Do you want to say anything Mr. Joshi?

Mr. Joshi: I shall say only a few words in support of what Mr. Lees-Smith, Sir Tej Bahadur Sapru, Mr. Sastri, and Mr. Mudaliyar have said.

Lord Chancellor, as a representative of Indian Labour, I may say that we ask for immediate self-government for India not merely for sentimental or racial reasons. I have made it quite clear that we want self-government not because we want Rulers of our own race and not because it is self-government; we want self-government as an instrument for promoting the welfare of the masses of our country, and I feel that object will not be achieved if we merely introduce Provincial autonomy now and leave aside the introduction of real self-government in India.

Lord Chancellor, I have some experience of working in the reformed Legislative Assembly for over eleven years, and I can tell you from my experience that since the new Legislative Assembly was brought into being it has been very difficult indeed to get the people of the country and the members of the Legislature to devote their time to constructive work for the uplift of the masses. The attention of the Government, the attention of the Legislatures, and the attention of the people of the country is wholly devoted to the problem of winning self-government for the country.

The Government have to grapple with the question of keeping law and order in the country; they have no time. The people have no time for constructive work for the uplift of the masses of the country. We are, therefore, unwilling to wait any longer in order to get an opportunity to promote measures for the uplift of the masses of India. We feel that if mere Provincial autonomy is introduced and real responsible government is delayed, the country will again be plunged into agitation, and the attention of the people and the attention of the Government and of the Legislatures will be wholly engrossed in the work either of agitation or of keeping peace and order.

We therefore feel, Lord Chancellor, that the proposal to introduce Provincial autonomy only and delaying the introduction of real responsible government in the country will not be of any use, and all of us who have so far worked for promoting constructive measures for the uplift of the masses and the workers will have either to join the agitation or to take a political holiday for a long time. Well, Lord Chancellor, we are not willing to do either of these things.

Chairman: Thank you very much, Mr. Joshi. The next speaker is Mr. Jayakar.

Mr. Jayakar: Lord Chancellor, I strongly support Mr. Lees-Smith's remarks and those of Sir Tej Bahadur Sapru and Mr. Sastri.

There are so many considerations one could urge with force against the proposals which seem to be gaining ground every day; but, having regard to the short time at my disposal, I shall only address myself to one important consideration, in order that the Government may take note of it. When I received the invitation from the Viceroy of India that I should come and attend this Round Table Conference, I was assured that, for the first time in the history of India, the method of arriving at definite conclusions by the process of negotiation, agreement, and good will was going to be tried. Indian patriots had advocated this method of conference many, many years ago. But unfortunately, as happens to so many political proposals in India, it was accepted very late. The Indian Legislative Assembly asked for this method in 1924-25, but it was not till 1930 that a Round Table Conference was granted.

I accepted the invitation, My Lord. I was warned by many of my political opponents and friends, " Oh, this is only a dodge, a trap, and the Conference is going to end in dismal failure. You gentlemen are being asked to go to England; but you will be fooled by British diplomacy. Be careful. You will be kept there from day to day, fed on promises, and in the end you will find that you will have to return to India with nothing in your hands but with your brow marked with the stain of dismal failure." Notwithstanding all such fearful prophecies, I and my friends arrived here. We wanted to give Britain a chance—possibly the last chance—of settling the constitutional question by the method of conference and negotiation. There are other methods known to India of achieving its freedom, but I am one of those who thought that it was our duty to give to Britain this opportunity of settling this question, if possible, by negotiation and good will.

We came here, Sir. We gave our best. I am not here referring to the unpopularity which we faced in India; that is a personal matter, and perhaps a precious personal memory which will always be recalled with great pleasure. We gave our best to your Government from day to day as you, Lord Chancellor, have witnessed. We gave it last year; we gave it this year. Now we want to know what this method is leading to—is it failure or success?

Speaking frankly, anything short of Central responsibility coupled with federation, any proposal of a mere Provincial character, even though it may amount to Provincial autonomy, will mean a complete failure of the Round Table Conference. There are no other words with which I can characterise such a consummation of the Round Table Conference. As to Provincial autonomy, we could have had it, speaking of my Province only, in or about 1920. Speaking of Bombay from which I come, it is no secret that a popular Governor of that Presidency recommended in the year 1920 that Bombay should have Provincial autonomy as it was then understood.

Eleven years have passed since. We have met here for two years successively. We have given the best of our time and energy and now if we are offered mere Provincial autonomy, all I can say is that I regard such a consummation as a dismal failure of the Round Table Conference.

What will be the result, Sir? The result will be that the few people who believed in the efficacy of this method, who believe in the promises of England, who believe in the rectitude of the ideals of British rule, who believe that Britain means in the long run to do justice to India—this small group of people will disappear from the country; and, without seeming to use threatening language, I may say that you will have deliberately handed over the country to the forces of disorder, chaos, and it may be revolution. God's ways are very inscrutable, Sir. Perhaps it is His will that the way to India's freedom should lie through revolution.

I feel Lord Chancellor, having heard the discussion on this gods, as you say in your language. All that I can say now from my seat in this Committee is: "Be careful what you do. The issues are clear before you. My country has made up its mind to be free. The question is whether you will give it freedom by good will so that your connection with India is kept intact, so that commercial relations are maintained between the two countries, whether you will give India freedom by this method of good will, or by the other alternative of bitterness. It is for England to decide. I can only say that the country has made up its mind to be free and when three hundred and fifty million people seven thousand miles away have made up their minds to be free it is difficult for you to govern them at such a distance. You could not do it just across your own border three hundred miles away with people of your own race and culture and much less is it possible for you to succeed in the case of people seven thousand miles away, entirely different from you in religions, culture, and in everything that constitutes life. The choice lies before you. I do hope that you will decide rightly. All I can say is that we shall regard it as a dismal failure, and the fault will not be ours, if on our return India is handed over to chaos, disorder and revolution.

Chairman: Thank you, Mr. Jayakar. Mrs. Subbarayan, you did not understand, I think that I was calling on you for your opinion. I am going to ask you all in turn.

Mrs. Subbarayan: I feel I must say a few words as this is a very important subject. I know that when I express my views on this subject I voice the feelings entertained by a large section of women in India. I was very much perturbed by the rumour that the plan of the British Government was to include Provincial government in the new constitution, with a vague promise of some measure of responsibility at the Centre at some indefinite and uncertain date in the future. Such an offer I would regard as entirely insufficient in itself, apart from the practical difficulties of its application, into which I will not go now, but which have already been briefly dealt with by Mr. Lees-Smith and Sir Tej Sapru with whose remarks I fully agree. I would like to point out that at this moment the eyes of all India are not fixed on the Provinces, but are fixed on the Centre. It is the emblem of our nationhood. The reforms to be secured are going to be valued in India entirely by the degree of responsibility given at the Centre. A denial of this or an indefinite postponement of it will cause the bitterest disappointment throughout the length and breadth of India, through all sections and classes of the people. I know I am not speaking for myself alone—Mr. Jayakar has already referred to it—when I say that we dread to contemplate what form that disappointment will take.

But it is not only a disappointment. In my opinion, such an offer would not implement the undertaking given by His Majesty's Government at the last Conference through the lips of the Prime

Minister. Then, apparently, reforms at the Centre and in the Provinces were regarded as of equal importance and imminence. I will go further and say that the offer which it is now rumoured will be made to us will be considered not only different from the undertakings given last year, but also that it is not made in the spirit of a real desire to settle the Indian problem on the principles of goodwill and constructive co-operation. It is not in the wording of any formula, I would like to point out, that our nation will find agreement, but in the spirit which underlies their undertakings. Mistrust of the spirit in which we, the people of India, were treated by Britain has long been the key-note of our attitude to Britain, and it was only last year that this mistrust was to some extent dispelled by the spirit of good will apparent in the Round Table Conference negotiations, and in the British Government's pronouncement.

If the spirit of that pronouncement is contravened— and this rumoured deviation of policy would indeed be a contravention of it—then the mistrust increases a hundredfold. We shall have to return to India bearing with us a message of despair and disillusionment to a future which none can bring themselves to contemplate without the gravest alarm and anxiety. I do therefore earnestly ask the Government seriously to consider all the consequences of this policy which I earnestly hope they will not adopt.

Mr. Sastri: I believe with Mr. Lees-Smith, that the wiser and the safer plan is to wait for Provincial autonomy until the second step could also be made ready to start with it. For I am sure that if any interval is allowed to come between the two steps, not only will there be an atmosphere of suspicion and mistrust, but the interval would be occupied by acute political trouble, and here I wish to be followed with attention by all the members who sit round the table—it will not be only trouble caused by the malcontents in India that you all know about, but there are others from a different quarter and with different motives no less active in creating trouble. If trouble is not forthcoming, there are those who will create it for those who wish it. We have known it every time. You good unsuspecting people in this country who govern us from seven thousand miles away do not know them, but we live night and day amongst them and with them, and we know that where the politicians wish for trouble, without their asking for it or bidding others do it trouble will be made ready to hand for them. It is that which we wish to avoid. Do not let there be an interval between these two steps, for there is no doubt that that interval will be taken advantage of by mischief makers of every kind, and the interval will be indefinitely prolonged, and your best intentions will be frustrated.

I have only one more word to say. I remember once sitting in No. 10 Downing Street round a smaller table where those who are accustomed to bear the heavy responsibilities of government sat together. One who is no longer in the land of the living but who held great power spoke as Foreign Minister.

I well remember his words. Speaking of a certain part of the Empire from which trouble had come, he said, " I wish we had known the full extent of the danger; our local agents failed to apprise us of its reality and its magnitude." Well, perhaps often people here err or take insufficient care because they are not warned in time. Let nothing of the kind be said upon this occasion, for we have warned you again and again, solemnly and in every tone of earnestness.

I have been a friend of this Empire. I have admired the patience and the admirable qualities that have built it up. I have never hestitated to pay my homage to the greatness, to the glory, and, all things being considered, I should like to say, as a student of history, to the beneficence of this Empire. But I cannot shut my eyes to the fact that often when those who run this Empire have come to the cross-roads of events they have failed to listen to the voice of caution and to the voice of justice, and have taken a wrong step and landed themselves and the great Commonwealth in confusion.

I do hope that upon this occasion the way of generosity, the way of peace, the way of human good will and human welfare will be chosen, and not that which is often pointed to by those who believe in the lower ideals of Imperialism, the way of harshness and the way of pride, for that no longer is the spirit of the world. It is in conflict with the spirit of humanity. Being adverse to the hopes of the race, it is bound to lead to failure and to disgrace. I am one of those who believe that somehow or other in the ears of those who have authority will be sounded the note of caution, and that we shall be found going the right way at this time, and we shall be found steering the ship of India and of Great Britain alike to the haven of mutual good will and safety.

My Lord Chancellor, I do hope and pray that justice and mercy, and wisdom will attend the few more sittings that we shall have of this Committee and of the Conference which is its parent.

Chairman: Thank you, Mr. Sastri. In one moment I shall call on Sir Samuel Hoare, but I should like first of all to say that the other two signatures to this appeal are Mr. Giri and Mr. Shiva Rao. They are not members of this Committee. The signatures were:—

Sir Tej Bahadur Sapru.	Mr. Mudaliyar.
Sir Chimanlal Setalvad.	Mr. Jayakar.
Sir Cowasji Jehangir.	Mr. Tambe.
Sir Phiroze Sethna.	Mr. Joshi.
Mrs. Subbarayan.	Mr. Jadhav.
Mr. Sastri.	Mr. Giri.
Mr. Ramachandra Rao.	Mr. Shiva Rao.

I think it was also signed by Mr. Lees-Smith.

Sir Purshotamdas Thakurdas: I have special reason to be grateful to Mr. Wedgwood Benn and Mr. Lees-Smith for having raised this question, because, for some reason or other which I have not been able to ascertain, I did not know of this letter which has been sent to the Press over the signatures of so many of my friends. I like to believe that it was owing to my not being present at the time when the letter was sent that the letter was not shown to me. But I wish to say on behalf of Mr. Jamal Muhammad, who is the President of the Indian Federation which I have the honour of representing here and of Mr. G. D. Birla, who is my other colleague, that we all three are unanimously and emphatically of the opinion which has been expressed here on this side of the table; and I regret very much that it was not possible for my friends to show us the letter and let us have the honour of signing that letter.

My Lord, I will not say anything at great length. I will remind you that yesterday, when I was speaking on the finance safeguards, I said I was oppressed by some of the rumours that were floating about, and I am very glad that through the efforts of our friends on the other side of the table we have got this opportunity of expressing our views. On behalf of the commercial community, I say that this offer of Provincial autonomy will be regarded as something which leads nowhere. If there are reserved still under control, the main arteries of the machine of Indian administration, what is there centred in the various Provinces and the Provincial administrations which will allow India to advance economically, and advance in the various fields, fiscal, financial, etc., which really matter to any Government which wants to do good and to develop its country?

I feel, Sir, that if trade and commerce are to be safeguarded in India, the best thing that the British Government can do is to see that the little good will which is still left—and there is a lot of it left to develop if you will only take the right step—is now watered with real substantial good will from this end and not by any such measure, which I may concede is being offered to us, perhaps owing to the political circumstances and pressure which appears so much on the surface to us who are not in the know of the inner secrets of the Cabinet. I am very apprehensive, Sir, that if this step which is being threatened is taken, Bolshevism and Communism in India will not have to be imported from across the borders, but I feel, and I say it with all the responsibility of my position here, that many in India will feel that the Government of India and His Majesty's Government are, perhaps unwittingly, planting that very dangerous plant in India by this action of theirs. The economic conditions are all such as will help any such effort, and that effort may be made in a manner which would require and baulk your most important and active Criminal Investigation Department in India. Let the Government not take a step which strikes us as being absolutely suicidal to the interests both of Great Britain and of India. We in India are completely fed up with any more experiments of a half-way house in this matter.

What we feel is that no reform will commend itself to India unless it is a substantial and whole-hearted reform at the Centre. Mere Provincial autonomy of the nature of which we have heard will lead us nowhere and in many cases would only make the remedy worse than the disease we are suffering from at the moment.

I have only one more word to say. The extremist press here which has been running down the Conference and the efforts of the Government in regard to this Conference have all warned the British public that if the Round Table Conference is to progress on the lines we want England may be bankrupt. I refuse to believe it. I think the people who write that do not know Britain's strength and vitality. The step that Government threaten to take will be the last straw which will break the camel's back. The camel's back is India's patience. I appeal to the British Cabinet not to miss this opportunity when we have here Mahatma Gandhi ready to look at facts and to go as far as he possibly can for the evolution of a system of government which will allow us to develop, to guide and to maintain the relations between India and England in a manner which may be to the lasting glory of England.

Mr. Gandhi: My Lord Chancellor, I tender my congratulations to Mr. Lees-Smith for being responsible for this debate, and I tender my congratulations to you, My Lord Chancellor, for having allowed this debate. I think that Mr. Lees-Smith has shown amazing optimism in initiating this debate. He has come as a physician with an oxygen pump and he is trying to pump oxygen into a dying body. I do not say that we are a dying body because of this rumour or threat of Provincial autonomy divorced from Central responsibility. In my own humble manner, almost from the commencement of these proceedings, I have been uttering words of warning and I was oppressed, and I said so in so many words, with a sense of unreality which dawned upon Sir Tej Sapru only yesterday, or as I happen to know, has been dawning upon him for the last few days, because he has given me the privilege of taking me into his confidence in common with his other friends and comrades, if I can also bracket myself as one of his comrades. Out of his ripe experience of administrative affairs, having held high offices in the Government, he has warned us of the danger of Provincial autonomy so-called. I am very often an unrepentant sinner. He had reasons for issuing this warning, especially in connection with me, because I had dared to discuss the question of Provincial autonomy with so many English friends who are responsible public men in this country, and he had heard of it, and so he gave me ample warning. It was for that reason that you find me as one of the co-signatories not to the document that has been placed before you, My Lord Chancellor, but to another similar document that was issued to the press about ten days ago and was addressed to the Prime Minister. I told him,

as I say here, that both he and the others who have spoken after him, and I, reached the same goal through different routes. Fools walk in where angels fear to tread. Not having had any experience of administration actually I felt that if Provincial autonomy was the Provincial autonomy of my conception I, for one, would not mind handling the fruit, feeling the thing and seeing whether it really answered my purpose. I love to meet friends, who may be opponents in policy, on their own platform and find out their difficulties, and find out also whether what they are offering is likely to lead one to the same place, and in that spirit and in that sense I ventured to discuss Provincial autonomy, but I found at once on discussion that what they meant was certainly not the Provincial autonomy that I meant, and so I told my friends also that I would be quite safe if they left me alone, that I was not going to sell the interests of the country out of a foolish conception of Provincial autonomy, or out of impatience to get something for the country. What I am anxious to do is, having come all these miles with the greatest diffidence, having come here to tender my whole-hearted co-operation to the Government and to this Conference, without the slightest mental reservation, and having applied that spirit of co-operation in thought, word and deed, to leave nothing undone, I have not hesitated even to go into the danger zone, and hence I have dared to talk about and discuss Provincial autonomy. But I have come to the conclusion that you, or the British Ministers, do not contemplate giving India that measure of Provincial autonomy which would satisfy a man of my mentality, which would satisfy the Congress, and which would reconcile the Congress to taking up Provincial autonomy although there may be delay in getting responsibility at the Centre.

At the risk of taking up a little of the time of this meeting, let me make my meaning clear, because here too I am adopting a somewhat different line of argument, and I am most anxious not to be misunderstood. Let me take, therefore, one illustration. I want to take for my illustration Bengal, because it is one of the Provinces to-day in India which is deeply affected. I know that there is a terrorist school active in Bengal. Everybody ought to realise by this time that I can have no manner of sympathy with that terrorist school in any shape or form. I am as convinced as I have ever been that terrorism is the worst kind of action that any reformer can take up. Terrorism is the very worst thing for India in a special manner, because India is a foreign soil for terrorism to flourish in. I am convinced that those young Indians who are giving their lives for what they consider to be a good cause are simply throwing away their lives, and that they are not bringing the country by one inch nearer to the goal, which is common, I hope, to us all.

I am convinced of all these things, but, having been convinced of them, supposing that Bengal had Provincial autonomy to-day, what would Bengal do? Bengal would set free every one of the

détenus. Bengal would not hunt down the terrorists—an autonomous Bengal, I mean—but Bengal would try to reach these terrorists and convert these terrorists, and I should approach them with every confidence and wipe out terrorism from Bengal.

But let me go a little step further, in order to drive home the truth that is in me. If Bengal was autonomous, that autonomy itself would really remove terrorism from Bengal, because these terrorists foolishly consider that their action is the shortest cut to freedom; but, having attained that freedom, the terrorism would cease.

To-day there are a thousand young men, some of whom, I would dare swear, have absolutely nothing in common with the school of terrorism, a thousand young men who have not been tried and who have not been convicted; they have all, every one of them, been arrested on suspicion. So far as Chittagong is concerned, Mr. Sen Gupta, who was Lord Mayor of Calcutta, who was a member of the Bengal Legislative Council, and who was also President of the Provincial Congress Committee in Bengal, is here to-day. He has brought to me a report signed by members of all the parties in Bengal in connection with Chittagong, and it is sad reading. It is painful to read this report, but the substance of this report is that there has been an inferior edition of the Black and Tans in Chittagong—and Chittagong is not a place of no importance on the map of India.

We now see there has been a flag-showing ceremony, and in making this demonstration all the military forces have been concentrated together in Calcutta, and these demonstrations have gone through ten streets of Calcutta. At whose expense, and what will it do? Will it frighten the terrorists? I promise you it will not frighten the terrorists. Will it then wean the Congressmen from Civil Disobedience? It will not do so. The Congress are pledged to this thing. Suffering is the badge of their tribe. They have determined to go through every form of suffering. It cannot, therefore, frighten them. Our children would laugh at this show, and it is our purpose to show the children that they must not be terrified, they must not be frightened by this display of artillery, guns, air force, and so on.

So that you see what is my conception of Provincial autonomy. All these things would be impossible; I would not allow a single soldier to enter the Province of Bengal; I would not pay a single farthing for the upkeep of an Army which I may not command. In such Provincial autonomy you do not contemplate a state in Bengal whereby I can set free all these détenus and I can remove from the Statute book the Bengal Regulation III. If it is Provincial autonomy, then it is independence for Bengal precisely in the same manner as that responsible Government I have seen growing up in Natal. That is a little colony, but it had its own independent existence; it had its own volunteer force and so on. You do

not contemplate that thing for Bengal or any of these Provinces. It will be the Centre still dictating, still ruling, still doing all these things. That is not the Provincial autonomy of my conception. That was why I said if you present me with that live Provincial autonomy, I shall be prepared to consider that proposition; but I am also convinced that that autonomy is not coming. If that autonomy was coming we would not see all these protracted proceedings that have taken place here; then we would have managed our own affairs in an entirely different manner.

But what really grieves me still more is this: We have all been brought here with one single purpose. I have been brought here specially through that very pact in which it is written that I was coming here to discuss and to receive really responsibility at the Centre: Federation with all its responsibility—safeguards undoubtedly—safeguards in the interests of India. I have said in season and out of season that I would consider every safeguard that is necessary. I personally do not really consider, with Mr. Lees-Smith or anybody, that all this constitution building should take all these long years—three years. He thinks of Provincial autonomy in eighteen months. My folly tells me that all this time is not necessary. Where the people have made up their minds, the Parliament has made up its mind, the Ministers have made up their minds and the public opinion here is ready, then these things do not take time. I have seen them not taking time where there has been one mind applied; but I do know that there is not one mind applied, but there are many minds, all following their own course and all perhaps with a disruptive tendency. That being so, I feel convinced that, in spite of this debate, not only is there going to be no responsibility at the Centre, but no tangible result coming out of this Conference. It hurts me, it pains me, that all this precious time of British Ministers, of the nation and of all these Indians who have come here, all of us, should have been wasted; but I am very much afraid that, in spite of this oxygen pump, the result will be nil.

I do not say that the result is, therefore, bound to be that Provincial autonomy will be thrust down our throats. I do not really fear that result. What I fear is something still more dreadful—that nothing at all is going to come out of this thing but terrible repression in India. I do not mind that repression; repression will only do us good. If we have repression in the right time, I will consider that also as a very fine outcome from this Conference. Repression has never done harm to a single nation which is sailing for her destined goal with a fixed determination, for that repression is really an oxygen draught, though not the draught that Mr. Lees-Smith has administered.

But what I fear is that the slender thread which I had again built up of co-operation with the British nation and with British Ministers is about to snap and that I should again declare myself

a convinced non-co-operator and civil resister—that I should re-deliver this message of non-co-operation and civil resistance to the millions of India, no matter how many air balloons will float over India or how many tanks will be brought to India. They will have no result. You do not know to-day that they produce no results even upon the tender young children. We teach them to dance with joy when bullets are flying about them—they are like so many crackers. We teach them to suffer for the freedom of their country. I do not despair. I do not think that because nothing happens here there will be chaos in the land. I do not think so. Not so long as Congress remains untarnished and non-violence goes forward throughout the length and breadth of India undiminished.

I have been told so often that it is the Congress that is responsible for this terrorism. I take this opportunity of denying that with all the strength at my command. On the contrary, I have evidence to show that it is the Congress creed of non-violence which up to now has kept the forces of terrorism in check. We have not succeeded to the fullest extent—I am sorry—but as time goes on we hope to succeed. It is not as if this terrorism can bring freedom to India. I want freedom precisely of the same type, only fuller, as Mr. Jayakar. I want full freedom for the masses, and I know that terrorism can do no good to the masses. The masses are silent and disarmed. They do not know how to kill. I do not talk of individual instances, but the masses of India have never moved in that direction.

Wanting that freedom for the masses, I know that this terrorism can do no good whatsoever. Whilst on the one hand Congress will fight British authority and its terrorism, legalised, so also will Congress fight terrorism, illegal, on the part of youth. Between these two what I feel is that there was this course of co-operation opened up for the British nation and for me by Lord Irwin. He had built this bridge, and I thought I was going to have a safe passage. I had a safe passage, I have come here, and I have come here to tender my co-operation. But I must confess to you that, apart even from what Mr. Lees-Smith has said, and from what has been said on this side by Sir Tej Sapru and by Mr. Sastri and the other speakers, the limited responsibility at the Centre which they have in view would not satisfy me.

I want that responsibility at the Centre that will give me, as you all know, control of the Army and Finance. I know I am not going to get that here now, and I know there is not a British man ready for that, and, therefore, I know I must go back and yet invite the nation to a course of suffering. I have taken part in this debate because I wanted to make my position absolutely clear. What I have been saying to friends in private sitting-rooms with reference to Provincial autonomy I have now said openly at this table, and I have told you what I mean by Provincial autonomy and what would really satisfy me. I close

by saying that I sail in the same boat as Sir Tej Bahadur Sapru and others, and I feel convinced that real Provincial autonomy is an impossibility unless there is responsibility at the Centre, or unless you are prepared to so weaken the Centre that the Provinces will be able to dictate to the Centre. I know that you are not prepared to-day to do this. I know that this Conference does not conceive a weak Centre when this Federal Government is brought into being, but that it conceives a strong Centre.

A strong Centre governed and administered by an alien authority, and a strong autonomy, are a contradiction in terms. Hence I feel that Provincial autonomy and Central responsibility have really speaking to go together. But I say again that I have an open mind. If somebody will convince me that there is Provincial autonomy, such as I have conceived for instance for Bengal, available, I would grasp it.

Chairman: Thank you, Mr. Gandhi. Do you wish to associate yourself, Pandit Malaviya, with what Mr. Gandhi has said?

Pandit M. M. Malaviya: Yes, but I should like to add a few remarks.

Chairman: Yes, certainly.

Pandit M. M. Malaviya: My Lord Chancellor, I feel that the very grave situation which has arisen demands that we should speak out our minds and leave no occasion for any friends in England to be in a state of doubt as to what is likely to happen. The question of self-governing India is an ancient question. For five years and more the Indian National Congress has been asking for the establishment of full self-government in India. In recent years when steps were taken to introduce reforms at the instance of the Congress, when the Montagu-Chelmsford Report was published and it was found that Mr. Montagu and Lord Chelmsford reported that there should be no responsibility introduced at the Centre, but that Provincial autonomy should be worked for ten years, and after that the Statute should be revised, and the question of introducing responsibility at the Centre should be considered, I published a criticism of the proposals, and I beg to quote from what I said in that criticism in order to show that the views I am now expressing are not views formed only on this occasion, but that it has been the feeling of educated Indians for several decades now. I said, with reference to the proposal that there should be no responsibility introduced at the Centre:—

> "It oppresses my soul to think that during this period—the next ten years—the Government of India, which, as I have shown above, has failed to build up the strength and prosperity of the people to the extent it should have done, should continue practically unchanged, and that the representatives of the people anxious to promote the good of their fellow men should still have to bear the pain and the humiliation of having no determining voice in the govern-

ment of their country. In the highest interests of humanity, as represented by the three hundred and twenty millions of this land, and for the good name of England, I earnestly hope that this will not be so, and that the statesmen of England will see that the Government of India is brought to a reasonable extent under the control of the people whose affairs it administers. Mr. Montagu and Lord Chelmsford have well described the effects of the war on the Indian mind. Let the statesmen of England ponder whether it will be reasonable to expect the people of India to be satisfied with any scheme of reform which will still keep them out of all power in the Central Government of their country."

Now, My Lord, that was an opinion which was held by all educated men throughout India. At the Congress which met at Amritsar the matter was strongly debated, and my friend, Mahatma Gandhi, and I stood for co-operating with the Government in the matter of the Reforms and we were happy that we were able to persuade Mr. C. R. Das, and other leaders of the National Party, to agree to work the Reforms for what they were worth, and to continue our efforts to obtain responsibility at the Centre.

We did continue our efforts, but the ten years which have passed have confirmed and deepened our conviction that it is not possible to produce any effect on the administration of the country unless responsibility is given to the representatives of the people in the Central Government.

It was for this reason that for three years, under Mahatma Gandhi's advice, many members did not take part in the Assembly and in the Councils. After three years, when the party decided to go into the Councils, one of the first resolutions which the Swaraj Party brought before the Government of India was, to ask for the establishment of responsible government at the Centre. It was known as the National Demand and I am glad to think—

(Pandit Malaviya's speech was continued on 26th November, 1931.—See page 1219.)

* * * * *

Sir Samuel Hoare: I wish to intervene in the debate—I would gladly have intervened earlier, but out of courtesy to the members of the Committee I did not do so—because I think I should have said something which would have avoided a good many of the alarmist statements which have been made during the morning. It seems to me that we run a great risk of drifting into an atmosphere of melo-dramatic tragedy. A number of most alarmist statements have been made this morning. It has been assumed I suppose from headlines in the press. Those of us who live in England and who know the English press pretty well do not attach too much importance to headlines in the press, to whatever party the particular newspaper may owe its allegiance. It seems to have

been hastily assumed, first of all, that the Government have irrevocably made up their minds upon a course of policy; secondly, that the Government have also decided to break pledges that they have given over and over again; and thirdly, that the Government have decided to bring to an end the policy that they have consistently adopted in spirit and in principle of trying to obtain a settlement of Indian constitutional questions by the method of conference and agreement. Let me, Lord Chancellor, say quite definitely that there is no ground for any of those suspicions at all. I take them in order.

First of all, that we are embarking upon a period in which we are going to abandon the attempt to find a solution of these very difficult constitutional problems by agreement. That is not so, and it will be made quite clear before the end of the Conference that we intend, so far as you allow us, to continue this definitely considered policy of *attempting* to advance by agreement and by conference. Secondly, it has been assumed this morning that the Government have irrevocably made up their minds upon a certain course of policy and upon a certain course of policy that is assumed to involve breaches of pledges given by us in the past. Lord Chancellor, that is not so. The Government are doing what I should have thought any sensible Government would do—they have been engaged almost incessantly during the last few days and weeks in attempting to gather representative Indian opinion and, particularly, representative Indian opinion from the members of this Committee. It is common knowledge—indeed, it has already been stated in the press—that a number of these interviews have been taking place in the course of the last two or three days between the Prime Minister and the leading representatives of Indian opinion in the Conference. These discussions are still going on, and it would seem to me to be the height of folly—apart from the height of discourtesy—that we should go through the farce of discussion of this kind when we have already irrevocably made up our minds upon any policy. That is certainly not the course that the Prime Minister and the Government have pursued. Quite honestly, and with an open mind, we have been discussing with representatives of Indian opinion in the Conference these very difficult questions, and let us not disguise from ourselves the fact that these questions are very difficult questions.

They are very difficult questions for this reason: that we have found in the course of these discussions that a number of problems that we had hoped would have been solved this year are not solved. What we had hoped might have proceeded more quickly twelve months ago will now take a longer period of time. In view of that fact—and it is a fact that I think has been admitted by every member of this Committee—we have been considering what is the best course, first of all, to carry out our pledges; secondly, for carrying out our pledges at the earliest possible date; and thirdly, for making quite clear both to the world of Great Britain

and the world of India that it is still our intention to try and find a solution of these questions at as early a date as we can with mutual good will.

That, Lord Chancellor, is the exact position of to-day. We are to-day having more of these discussions. We are considering very carefully the grave issues to which allusion has been made this morning, and when we ask you to come and consult us, we ask you because we wish to hear your views, and not because we have already made up our own.

That, Lord Chancellor, is in a sentence or two the exact position as it is to-day. After this discussion I shall, of course, and so will you, convey to the Prime Minister the views that have been expressed by several influential members of the Committee. Those views have all expressed one view, and no doubt a very weighty view; but it is obvious to everyone that even upon the kind of questions that we have been discussing this morning, there is no unanimity, even though there may have been unanimity in the speeches this morning. What I will undertake to do is, to see that the views which have been expressed by several important members of the Committee this morning will at once receive the very careful attention of the Prime Minister.

Now, Lord Chancellor, I do not think there is anything else I need add to what I have said. I must not be drawn, in a discussion of this kind, into a debate with Mr. Gandhi on administrative questions, but I should like, in fairness to the administration of the Government of India, to say that I do not agree with the picture that he has this morning painted of what is going on in Bengal. I have this morning written a letter to Mr. Gandhi, which I think is on its way, asking him to come to the India Office, when we would explain to him what we believe to be the real state of affairs.

I have now told the Committee quite frankly and unreservedly what the position of affairs is, and I hope, having said what I have, we can dissipate this atmosphere of tragedy and panic into which so many members of the Committee have drifted.

Mr. Wedgwood Benn: There is one thing I should like to ask, Lord Chancellor. The Scretary of State has told us that what has been said will be conveyed to the right quarters. I presume it will go into a Report by this Committee to the Plenary Session, so that it may be put in proper order. That would be the normal course. I should like to ask, however, whether he will tell us at any time what the decision of the Government is and what is their considered view after hearing the opinions expressed.

Sir Samuel Hoare: Obviously, the Government will have to announce their decision, but when and how I cannot say this morning.

Mr. Wedgwood Benn: But will it be at a time when it will be subject to review by this Committee?

Sir Samuel Hoare: I cannot say that without consulting the Prime Minister; you could not expect me to do so.

Mr. Wedgwood Benn: If the Prime Minister were willing that the general trend of the Government's mind should be made known to the Committee, would the Secretary of State find some means of conveying it to the Committee before the Committee dissolves?

Sir Samuel Hoare: Obviously, I cannot give a pledge as to that without consulting the Prime Minister. I will convey to the Prime Minister your view on the point.

Mr. Wedgwood Benn: The view of the Committee; my personal view is nothing.

(The Committee adjourned at 1-10 p.m. and resumed at 2-30 p.m.)

Chairman: Your Highnesses and Gentlemen, the discussion this morning has been extremely interesting, although I am bound to say it has taken me a little by surprise. Mr. Lees-Smith was good enough to tell me as we came in that he was going to raise that sort of question, and I am very grateful to him for not telling me till this morning, because if he had told me last night I should have had a sleepless night. I should like to think a little bit about that, to think a little more carefully what should be done. Therefore subject to your approval, I would rather take the remainder of that discussion to-morrow. We shall then all have time to consider it.

Mr. Jinnah: My Lord Chancellor, I do not intend to say anything about the course you have proposed, but I would beg of you to-morrow—I hope you will not have a sleepless night—but to-morrow, when you have had a sound sleep and when you come here, please give us your definite ruling. I want your definite ruling on the points that have been raised by Mr. Lees-Smith. I understand his points to be that this Committee has got to consider these questions:—First, Provincial autonomy to be established as soon as possible, and the question of responsibility to be explored and considered. It might come into being later on, though I would not mention the period. Secondly, this Committee must express its opinion on the question that the Provincial autonomy and the responsibility at the Centre must come into being simultaneously. Question No. 3: This Committee also must express its opinion as to the procedure and the methods which should be adopted by the Government if the second alternative is recommended by this Committee. Now I want your ruling definitely that those are the questions which will be discussed by this Committee, and that you will incorporate the opinion or the conclusions of this Committee in your Report. When you give your rulings on these points, then we shall have to consider our position and express our views if we are advised to do so.

Chairman: Might I ask only one question: Are you for or against a Report?

Mr. Jinnah: That is for you to decide.

Chairman: No, I cannot decide what you are for. How can I decide what you think?

Mr. Jinnah: I say that if that is the desire, that it should be in the Report, we are not going to stop it.

Chairman: Just one moment. It is not my personal desires at all. The only point is, I understand—I do not know whether it is correct—that some people would rather like this to be incorporated in the Report. Is that your wish or not?

Mr. Jinnah: I say if that is the desire and the general wish of this Committee, whatever views we will express on this question, our views will also be incorporated in the Report.

Chairman: Certainly, yes; that is right enough no doubt. As far as I can see at present there are a good number of people with one view. I shall not put in the Report everybody who says that; a large number of people say that. I will record your view, certainly.

Mr. Jinnah: And if we decide to express our views, then no doubt they will be incorporated in the Report.

Chairman: Most certainly, if there is a Report.

Mr. Jinnah: If there is a Report. Lord Chancellor I will tell you why I am anxious about this. Please do not misunderstand me.

Chairman: No, no.

Mr. Jinnah: I am anxious about this in this way. Let us know definitely where we stand and what we are doing. I mean I think it is fair we should at least know what we are doing and not go on in a haphazard way and discuss this for half an hour or two hours, and then leave it on one side. Then again we do not know what we have done or where we are.

Chairman: No, no.

Mr. Jinnah: Therefore I want you to give us a definite ruling as to what you propose to do so far as this Committee is concerned. Then we shall have to consider whether to express our views or whether we shall reserve our opinions, or whether we want our views to be incorporated in the Report. It is for us to consider that.

Chairman: Yes, that sounds very logical.

Mr. Jinnah: It is perfectly logical, and I want to be logical and practical also.

(The discussion on Order of Constitutional Development is continued on page 1210.)

Consideration of the Draft Fourth Report on Defence and External Relations.

Chairman: If you will kindly take the Report in your hands on Defence and External Relations, I propose to do what we have always done before, to read it straight through without comment; then, after having read it straight through, I will take it paragraph by paragraph. At the end of that I will ask Mr. Gandhi to continue the debate upon Finance.

Here is the Report.

*(The Chairman here read the paragraphs of the Draft Fourth Report dealing with Defence and External Relations.)**

1. The Committee when discussing the subjects covered by this Report, *viz.*, Defenec, External Relations, Financial Safeguards, and Commercial Discrimination, did not have the advantage of hearing the views of the Muslim members of the British Indian Delegation who reserved their opinion on such questions until such time as a satisfactory solution had been found of the problems which confronted the Minorities Committee. Some other representatives of minorities similarly reserved their opinion.

2. Our consideration of the question of Defence in its constitutional aspect is based on the principle enunciated in the Defence sub-Committee at the last Session that " The defence of India must to an increasing extent be the concern of the Indian people, and not of the British Government alone."

3. The view was strongly put forward by some members that no true responsibility for its own government will be conferred on India unless the subject of Defence (involving, of course, the control of the Army in India, including that of the British troops) is immediately placed in the hands of an Indian Ministry responsible to an Indian Legislature, with any safeguards that can be shown to be necessary.

4. The majority of the Committee are unable to share this view. They consider that it is impossible to vest in an Indian Legislature during the period of transition the constitutional responsibility for controlling Defence, so long as the burden of actual responsibility cannot be simultaneously transferred.

5. The majority of the Committee, therefore, reaffirm the conclusion reached in the sub-Committee at the last Session that " the assumption by India of all the powers and responsibility which have hitherto rested on Parliament

* These paragraphs, as amended in consequence of the ensuing discussion, are printed as paragraphs 1—12 of the Fourth Report of the Federal Structure Committee. (*See* pages 1265 to 1267.)

cannot be made at one step, and that, during a period of transition, the Governor General shall be responsible for Defence,"* being assisted by a "Minister" of his own choice responsible to him and not to the Legislature.

6. At the same time there is no disagreement with the view that the Indian Legislature must be deeply concerned with many aspects of Defence. It is undeniable that there can be no diminution of such opportunities as the present Legislature possesses of discussing and through discussion of influencing Defence administration. While the size, composition and cost of the Army are matters essentially for those on whom the responsibility rests and their expert advisers, yet they are not questions on which there can be no voicing of public opinion through constitutional channels. The Legislature would thus continue to be brought into the counsels of the Administration in the discussion of such outstanding problems as the carrying out of the policy of Indianisation. Further, there must be correlation of military and civil administration where the two spheres, as must sometimes inevitably be the case, are found to overlap. In the latter connection the suggestion was made that a body should be set up in India analogous to the Committee of Imperial Defence in Great Britain.

7. To secure this measure of participation, various suggestions were made, the cardinal feature of which, in almost all instances, was the precise position to be assigned to the "Minister" appointed by the Governor General to take charge of the Defence portfolio. It was assumed that his functions would roughly correspond to those of the Secretary of State for War in the United Kingdom. Among the more important proposals made were the following:—

(i) The "Minister", while primarily responsible to the Governor General, should as regards certain aspects only of Defence, be responsible to the Legislature.

(ii) The "Minister", though responsible to the Governor General, should be an Indian; and he might be chosen from among the Members of the Legislature.

(iii) The "Minister", of the character contemplated in (ii), should be considered to be a Member of the "responsible" Ministry, participating in all their discussions, enjoying joint responsibility with them and in the event of a defeat in Legislature over a question not relating to the Army should resign with them, though, of course, remaining eligible for immediate re-appointment by the Governor General.

* *See* paragraph 11 of the second Report of the Federal Structure sub-Committee.

8. While some of these suggestions contain the germs of possible lines of development it is impossible to escape from the conclusions (*a*) that, so long as the Governor General is responsible for Defence the constitution must provide that the Defence " Minister " should be appointed at the unfettered discretion of the Governor General and should be responsible to him alone, and (*b*) that this " Minister's " relations with the rest of the Ministry and with the Legislature, must be left to the evolution of political usage within the framework of the constitution.

9. The view was put forward that, while supply for the defence services should not be subject to the annual vote of the Legislature, agreement should be sought at the outset on a basic figure for such expenditure for a period of, say, five years, subject to joint review by the Legislature and representatives of the Crown at the end of such period, with special powers in the Governor General to incur expenditure in cases of emergencies. The details of any such plan should receive further careful examination.

10. Very similar considerations to those governing the constitutional treatment of Defence apply in the case of the subject of External Relations, and in general the views expressed by members of the Committee on this subject followed closely their opinions regarding the constitutional provisions in relation to Defence. In particular the majority of the Committee reaffirm the view taken in the Second Report of the sub-Committee (paragraph 11) that the Governor General should be responsible for External Relations.

11. There is, however, a difficulty in connection with External Relations which hardly arises in the case of Defence, *viz.*, that of defining the content of the subject. The reserved subject of External Relations would be confined primarily to the subject of political relations with countries external to India and relations with the frontier tracts. Commercial, economic and other relations would fall primarily within the purview of the Legislature and of Ministers responsible thereto, in so far, however, as questions of the latter character might react on political questions, a special responsibility will devolve upon the Governor General to secure that they are so handled as not to conflict with his responsibility for the control of External Relations. There will accordingly be need for close cooperation, by whatever means may prove through experience most suitable for securing it, between the " Minister " holding the portfolio of " External Relations " and his colleagues the " responsible " Ministers.

12. Some misunderstanding may have been caused by the description, in paragraph 11 (ii) of the sub-Committee's second Report, of External Relations as including " Rela-

tions with the Indian States outside the Federal sphere ". As set out in the Prime Minister's declaration at the close of the last Session, " The connection of the States with the Federation will remain subject to the basic principle that in regard to all matters not ceded by them to the Federation their relations will be with the Crown acting through the agency of the Viceroy ".

Chairman: Now will you be good enough to go back to the first paragraph? Are there any comments on paragraph 1, paragraph 2, paragraph 3, paragraph 4, paragraph 5?

Pandit M. M. Malaviya: In the last line but two of paragraph 5, it says, " The Governor General shall be responsible for Defence, being assisted by a ' Minister ' of his own choice ". I suggest that we should say, as we discussed it, " by an Indian Minister of his own choice ".

Chairman: That comes in later. I put it in later. You are quite right to draw attention to it. We are coming to that.

Pandit M. M. Malaviya: With regard to paragraph 6. In that paragraph you say:—

> " While the size, composition and cost of the Army are matters essentially for those on whom the responsibility rests and their expert advisers."

Does that mean that the responsibility rests upon the Legislature, or is it on the Governor General?

Chairman: What I am saying there is this: " On whom the responsibility rests " for Defence. He must be the man to decide how it is to be carried on, but I know your views, which I have set out, but we rather thought that during the period of transition—you disagree with us—that must be upon the Governor General. I have recorded your views. You will see that at the very beginning.

Pandit M. M. Malaviya: But you say " the size, composition and cost ". Is not that a matter to be settled by the Legislature after taking expert opinion?

Chairman: I think if you read on you will see that it answers your point. The Report says:—

> " While the size, composition, and cost of the Army are matters essentially for those on whom responsibility rests and their expert advisers, yet they are not questions on which there can be no voicing of a public opinion through constitutional channels."

I have got a note of your speech. When you were making your speech, I made a note of all your points and it was on your points that I drafted this paragraph. I put this in to satisfy you. Perhaps you would not mind just reading on. The sentence begins: " While the size, composition, and cost of the Army are matters

essentially for those on whom the responsibility rests and their expert advisers ". Now, at the moment, we rather think that the responsibility rests upon the Governor General, but if you will read on you will see the sentence continues " yet they are not questions on which there can be no voicing of public opinion through constitutional channels ". The Legislature would then be brought into the counsels of the administration. You will see the paragraph continues:—

> " The Legislature would thus continue to be brought into the counsels of the administration in the discussion of such outstanding problems as the carrying out of the policy of Indianisation,"

and so forth. What we are there saying is that during the period of transition the Governor General is the responsible man, and he therefore must, with regard to the size, composition, and cost of the Army, have the ultimate voice, aided by his expert advisers. Of course, I know that your view is that at the very beginning that should all pass to the Legislature.

Pandit M. M. Malaviya: What I submit is this. The Governor General has the control of the Army under this proposal. I see that that is so. I do not quarrel with that—I know that is a view of a number of persons—but the size, composition, and cost of the Army are essentially matters for the Legislature to decide upon after taking such expert advice as it may think fit. If that is left to the Governor General, it would make the position even worse than it is to-day. To-day, it is not in the power of the Governor General to say what the size, composition, and cost of the Army should be. He has to decide that on the advice of His Majesty's Ministers here, the War Office, the Imperial Defence Committee, and so on. As the Report stands he would be able in the future to decide, say, that ten thousand more troops should be added.

Chairman: Is that quite right? The paragraph says, that these matters are essentially for those on whom responsibility rests.

Pandit M. M. Malaviya: That is exactly what I want to have made clear. Does such responsibility rest on the Governor General?

Chairman: I was using the title Governor General in contradistinction to the Legislature. I was simply saying that at present, whatever may happen in future, I am using Governor General as a phrase to distinguish from control by the Indian Legislature.

Pandit M. M. Malaviya: But would it not be better to make clear what is meant: whether the Governor General in future will decide these questions or whether they will be decided by any other agency? I submit that the question of the size and composition and cost of the Army are essentially matters for the Legislature.

Chairman: I am afraid we do not quite agree with that. I know you have said so. If you will look back to the third paragraph again, that is where I have recorded your view:—

> "The view was strongly put forward by some members that no true responsibility for its own Government will be conferred on India unless the subject of Defence (involving, of course, the control of the Army in India, including that of the British troops) is immediately placed in the hands of an Indian Ministry responsible to an Indian Legislature."

Pandit M. M. Malaviya: That is true; I quite see that. My point with regard to the paragraph now under consideration is that the question of the size and the composition and the cost of the Army should be within the competence of the Legislature acting upon expert advice; and then, once the troops have been formed, the control of the troops remains with the Governor General under your scheme.

Chairman: That is not our view. I know it is your view. I thought I had recorded that by giving you that very large paragraph. But what I will do, Pandit, is this. I want to see that everybody's views are properly expressed. I will add a note to this and say that the views of some people are that these should be matters for the Legislature. Will that satisfy you?

Pandit M. M. Malaviya: That is part of it, but what I want to make clear is whether the Governor General is to decide and who is meant by "those on whom the responsibility rests". Why should not we say whether it is His Majesty's Government, the War Office or the Committee of Defence, or what it is? This is left very vague, My Lord.

Chairman: I purposely left it very vague in your interests. I think I will record at the end of this, and I will ask Mr. Carter to see that it is recorded, that some people think that the size, composition, and cost of the Army ought to be within the purview of the Indian Legislature. I thought it did come later, but it does not matter. That will cover your point. Then No. 7. I should just like to say this: I had such a little time to draw up this Report, that I asked Sir Tej Sapru, who, if he will forgive me saying so in public, made one of his very brilliant speeches on this matter, to send me a few notes, so that I could incorporate them in this Report. These are really derived from your notes, Sir Tej —7 and 8.

Sir Tej Bahadur Sapru: So far as I am concerned, I have no grievance; it presents my views perfectly correctly.

Chairman: Thank you. Now 8 and 9. Now will you turn over to page 5—No. 10? No. 11 I put in. My friend Mr. Joshi has gone. I have put that in in order to save his point. I think it does so. We have considered it very carefully. And 12, Pan-

dit, I will put that in at the end so as to save your point. Subject to that I sign it on your behalf. Pandit, I will submit the sentence to you so that you can get it quite right.

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(*Lord Sankey here vacated the Chair, which was taken by Lord Reading.*)

Financial Safeguards (continued from page 1164.)

Mr. Gandhi: My Lord, I followed your speech yesterday on this very important subject with the greatest attention and with all the respect that is undoubtedly your due, and in connection with that speech I read the paragraphs on Finance in the Federal Structure sub-Committee's Report of last year. I think they are paragraphs 18, 19, and 20, and I regret to have to record my opinion that I cannot endorse the restrictions that have been suggested in these paragraphs. My position, and, I think, the position of all of us, must be very difficult when we do not know exactly what are the financial burdens.

Let me explain. I would naturally have to consider the thing from one point of view if "Army" was a reserved subject, and another point of view if "Army" was a transferred subject. I have also very great difficulty in expressing my view by reason of the fact that the Congress is emphatically of opinion that the obligations to be taken over by the incoming Government should be subject to audit and impartial examination.

I have in my hands a Report prepared by four impartial men, two of them ex-Advocates-General of Bombay; I mean Mr. Bahadurji and Mr. Bhulabhai Desai. The third examiner or member of the Committee is Professor Shah, for a long time professor in the University of Bombay, a man having an all-India reputation and author of valuable works on Indian economics. The fourth member of the Committee is Mr. Kumarappa, who holds European degrees and whose opinions on finance command considerable acceptance and influence. These four gentlemen have submitted an elaborate Report in which they, as I hold, make out a conclusive case for an impartial enquiry, and they show that many of the obligations do not really belong to India.

In this connection I want very respectfully to say that the Congress has never suggested, as it has been viciously suggested against it, that one single farthing of national obligations should ever be repudiated by the Congress. What the Congress has, however, suggested is that some of the obligations which are supposed to belong to India ought not to be saddled upon India and should be taken over by Great Britain. You will find in these volumes a critical examination of all these obligations. I do not propose to weary this Committee with a recital of these things. Those who would care to study these two volumes may,

and I have no doubt will, study them with considerable profit, and they will perhaps discover that some of these obligations should never have been saddled upon India. That being the case, I feel that if one knew exactly where one was it would be possible to give a decisive opinion, but subject to that I venture to suggest that the restrictions, or the so-called safeguards, that have been suggested in paragraphs 18, 19 and 20 of this Report of the Federal Structure sub-Committee will, instead of helping India on her course, hinder her progress at every step.

You, My Lord, were pleased yesterday to say that the question before you was not one of want of confidence in Indian Ministers. On the contrary, you had every hope that the Indian Ministers would do as well as any other Ministers, but you were concerned with the credit of India outside the borders of India, that the investors who supplied capital to India and who brought their money to India at reasonable rates of interest, would not be satisfied if there were not safeguards of the type suggested here; and you went on further, if I remember rightly, to say that when there were any investments in India from here, or when there were any monies lent to India, it was not to be supposed that they were not also for the interest of India. If I remember rightly, Your Lordship used the words, " obviously it was in the interests of India ". I was really waiting to find some illustrations, but no doubt you took it for granted that we would know those matters or those illustrations which you had in mind. I had really converse illustrations in mind while you were speaking, and I said to myself, I have within my own experience several illustrations where I could show that the interests of India were not in those particular illustrations identical with the interests of Great Britain, that the two were in conflict, and that therefore we could not possibly say that every time there were loans from Great Britain they were in the interests of India.

Take, for instance, so many wars. Take the wars of Afghanistan. As a young man I read with great avidity the history of wars in Afghanistan, written by the late Sir John Kay, and I have a vivid recollection left on my mind that most of these wars were certainly not in the interests of India; and not only that, but that the Governor General had bungled over these wars. The late Dadabhoi Naoroji taught us young men that the history of British finance in India was a history of muddle and bungling, where it was not also one of exploitation of India.

The Lord Chancellor uttered the warning, and you were pleased to enforce his warning, that finance at the present moment was a very delicate matter and that therefore those of us who took part in the discussions should be cautious and careful so as not to mishandle the subject and create difficulties or add to the difficulties that already face the Finance Minister in India. I therefore do not propose to go into any details; but I cannot help saying one thing in connection with this increase in the ratio. I mean, when

the rupee was appreciated to 1*s.* 6*d.* from 1*s.* 4*d.* Now, there the measure was adopted in the face of almost unanimous opposition from Indians—Indians who were not in any way connected with the Congress. They were all independent, some of them great experts in finance, who knew exactly what they were saying. Now, there again one finds that the Indian interest was really subordinated to foreign interests. It does not require an expert to know that a depreciated rupee is always, or as a rule would be, in the interest of the cultivators. I was very much struck by an admission made by two financiers here, that if the rupee, instead of being linked to sterling, had been left to itself at least for the time being, it would have been of great advantage to the cultivators. They were going to the last extreme and thinking of some catastrophe that might befall India if the rupee left to itself went down to its intrinsic value, namely, 6*d.* or 7*d.* Personally, I have not even then been able to see that really the Indian cultivator would be in any shape or form damaged.

Now that being the case, I cannot possibly endorse safeguards that would interfere with the full discharge of his responsibility by the Indian Finance Minister, and that responsibility conceived predominently in the interests of the ryots.

But I want to draw the attention of this Committee to one thing more. In spite of the caution uttered by the Lord Chancellor and you, My Lord, I feel somehow or other that if Indian finance was properly managed and managed entirely in the interests of India we should not be subject to fluctuations as seriously as we are to-day in the foreign market, the fluctuations in London. I want to give you my reason for it. When I first became acquainted with the writings of Sir Daniel Hamilton I approached him with considerable diffidence and hesitation. I knew nothing practically of Indian finance, I was absolutely new to the subject, but he with his zeal insisted upon my studying the papers that he continued to send me. As we all know, he has large interests in India, he has himself held offices of importance and is himself an able financier. He is to-day making experiments himself along the lines he has suggested, but this is the one striking thought that he has placed before all who would care to understand his mode of looking at Indian finance, and he says that India does not need to look to the gold standard or to the silver standard or to any metallic standard; India has metal all its own, and he says that that consists in her countless millions of labourers. It is true that the British Government has not declared itself insolvent in connection with Indian finance, that it has been up to now able to pay its way; but at what cost? It has been, in my humble opinion, at the cost of the cultivator, the money has been squeezed from the cultivator. Instead of thinking in terms of rupees, if the authorities had consulted and thought of finance in terms of these masses, they could have managed the affairs of India, in my humble opinion, infinitely better than they have hitherto done;

they would not then have been obliged to fall back upon the foreign market. Everybody recognises, British financiers have told us, that for nine years out of ten India has always a favourable balance. That is to say, whenever India has what may be called an eight anna or ten anna year—eight annas is really enough to give her a favourable balance—then India produces through bountiful nature, from Mother Earth, more than enough to pay all her obligations, and more than pay for all the imports that she may ever require. If it is true, and I hold that it is true, a country like India does not really need to fall back upon the foreign capitalist. She has been made to fall back upon the foreign capitalist because of the enormous drain that has taken place from India in order to pay what are called the home charges, in order to pay the terrific charges for India's defence. She is utterly unable to discharge these obligations, and yet they have been met by a revenue policy which has been condemned in no unmeasured terms by one of the officiating Commissioners, the late Romesh Chandra Dutt. I know he engaged in a controversy with the late Lord Curzon on this very topic, and we Indians came to the conclusion that the right was on the side of the late Romesh Chandra Dutt.

But I want to go a step further. It is known that these millions of cultivators remain idle for six months in the year. If the British Government saw to it that these men would not remain idle for six months in the year, imagine the wealth that they would produce. Why would we then need ever to fall back upon the foreign market? That is how the whloe idea of finance appears before me, a layman, a man who continually thinks of these masses and wants to feel as they would feel. They would say " we have all the labour; we do not want, therefore, to fall back upon any foreign capital. So long as we labour the whole world would want the products of our labour ". And it is true, the world to-day wants the products of our labour. We would be able to produce those things that the world would voluntarily and willingly take from us. That has been the condition of India for ages past.

Therefore, I really do not feel the fear that you, Mr. Lord, have expressed in connection with Indian finance. Having these views I do not really share the fear that Indian finance would be in jeopardy if we whispered something that need not be said now, or if a man like me said to-day that I would want complete control of Indian finance if India is to have responsibility at the Centre. In my opinion unless we have control over our own doorkeepers and over our own purse absolutely unrestricted, we shall not be able to shoulder the responsibility, and it will not be a responsibility worth the name.

Holding this view I feel that the safeguards that I would suggest are of a totally different character; but I am not in a position at the present moment to suggest any safeguard at all—not until I know that the nation is to have complete responsibility, complete control over her Army, over the Civil Service, that the nation

will be at perfect liberty to take over so many of the civilians as the nation would want, so many of the soldiers as the nation would want, and on terms that would be suitable for a poor nation like India. Unless I know all these things, it is practically impossible for me to suggest the safeguards. As a matter of fact, when all these things are taken into consideration, probably there will be no necessity for any safeguards, unless one starts with want of confidence in India's ability to shoulder her burden and India's ability to carry on the administration of the country in a peaceful manner. The only danger under such circumstances that I can possibly conceive would be that the moment we take charge there would be utter chaos and disorder. Now, if that is the fear that seizes the British mind, then there is no meeting ground. We take responsibility, we ask for responsibility, we demand responsibility, because we have got that confidence that we would be able to carry on our affairs in a decent manner, and I would feel certainly in a much better manner than British administrators have done or could ever do—not because they are not able. I will grant that they are much abler than we are; I will grant that they have got an organising capacity which we have to learn at their feet. But we have one thing, that we know our country, we know our people, and we should therefore be able to run our Government cheaply. We would avoid all the quarrels, and we, not having any imperialistic ambition, would not go to war with the Afghans or any other nation, but we would cultivate friendly relations, and they would have nothing to fear from us.

That is the kind of idea that runs through my mind as I conceive Indian finance. You will see, therefore, that in my opinion Indian finance does not occupy such a large place in my conception, and not such a dangerous position as it evidently occupies in your mind, or the Lord Chancellor's mind, or in the minds of British Ministers with whom I had the privilege of discussing this question. Hence, and for the reasons that I have explained, I must respectfully say that it is not possible for me to subscribe to the safeguards that are suggested here, or to endorse the fears that agitate the British public, or the responsible public men in Great Britain.

One thing I would like to say: that for every obligation that the National Government undertakes there will be proper guarantees, such guarantees as a nation can possibly give, forthcoming, and assurances of a right type forthcoming. But, in my opinion, they will never be of the type or of the character described in these paragraphs. After all, if there are, and there would be, I have no doubt, certain obligations that we would have to take over and we would have to discharge towards Great Britain, supposing that we bungled and we did not do anything whatsoever, no assurances given on paper would be worth anything. Or supposing that India, when she comes into her own, unfortunately for her has a series of bad seasons, then again I do not know that any

safeguard that might possibly be conceived would be enough to squeeze money out of India. In these critical circumstances—unforeseen circumstances—visitations of nature, it is impossible for any national Government to give guarantees.

I do not wish to labour this point any further, I thought that I should occupy a few minutes of this Committee in unburdening myself of the views that a layman like myself holds upon Indian finance.

I can only close with the great sorrow that has overtaken me in connection with these things that I should find myself in conflict with so many administrators who have experience of Indian affairs and also of so many of my countrymen who are attending the Round Table Conference; but if I am to discharge my duty as a representative of the Congress, even at the risk of incurring displeasure, I must give expression to the views I hold in common with so many members of the Congress.

Chairman: I did not want to interrupt you, Mr. Gandhi, when you were speaking, but I do not think that you quite accurately represented what I had said. Obviously, I could not interrupt you, because it means going back and repeating what has been said, and, after all, it stands recorded. It may be a misinterpretation of some observations that were made, and of course there are many economic and financial matters which you have raised which have not been discussed at all. I only want to say in reference to them that you have introduced them for the purpose of your argument. All I want to say is that I do not want to reply to them to-day, for the reason that I have already given in the speeches that I have made with regard to finance, but I did not want it to be assumed that there is no answer to it.

Mr. Gandhi: Of course not.

Mr. Iyengar : My Lord, I propose, in the few observations that I desire to make, to confine myself to two or three points that you, My Lord, raised yesterday in the course of your demand that the Governor-General should possess affirmative powers in certain matters of finance, apart from such safeguards and other guarantees as were adumbrated before. You, My Lord, yesterday put before this Committee the case of the rejection of the Finance Bill in the Legislative Assembly in 1924 as the kind of thing that may happen in the future Legislative Assembly which would be set up under the federal scheme that we all have in contemplation, and you, therefore, wanted that provision should be made for restoring the Finance Bill with a view to enabling the Government to collect its taxes and carry on the government. If I may say so, with all due respect, My Lord, I think that in making that demand Your Lordship has failed to picture the position as it would be when the Federation came into existence as compared with the position that existed in 1924. The position of the Legislative Assembly of 1924 was that it consisted of a Legislature in which the Swarajists had

come to the position of making a national demand and of following a policy of obstruction with a view to enforcing the national demand. The position of the Government at that time was that it was an absolutely irresponsible Government which had absolutely no claim on the support of the representatives of the people in the Legislature who were definitely hostile to them, and to whom neither the Finance Member nor the Government representatives had any responsibility or obligation, constitutionally speaking. The Assembly that would be brought into existence under the Federation is one in which the Finance Member will be a Member of the Cabinet, responsible to the Legislature and able to command a working majority of the votes of the Legislature to carry through his proposals. We have, therefore, to assume very rightly that when he presents his Budget he presents it with the assurance of a certain and safe majority behind those financial proposals. When that state of things exists I think, *ex hypothesi*, the conditions which you, My Lord, envisaged cannot arise. Assuming, however, that between the time when the Finance Minister, confident of his majority in the House, brought forward his Budget, and the time of its actual vote, there was such a cataclysm as to make him lose that majority in the House, then I say that is a condition of things which happens in every other democractically governed country, in every other parliamentary system, and they have, of course, devised measures for dealing with such situations. There is absolutely no reason, therefore, why the same procedure and the same method cannot be adopted in regard to the Federal Legislature that will be brought into being if such an extraordinary contingency does arise. As we all know there are various ways in which this is done, and in England the parliamentary machinery has been perfected so as to secure that due regard to the absolute and unfettered rights of the British Legislature to accept or reject any financial proposals of the Government. Measures have been so devised, and conventions have also been established that would enable the Government to carry on while the Finance Bill is on the anvil. There have been the usual Consolidated Fund charges voted, there have been votes of credit, and there are various other devices by which the Government is able to find the funds to carry on the administration until the Finance Bill is put through later in the session. In the meantime if there is any constitutional crisis in the Budget then there is the normal constitutional machinery whereby, by means of the replacement of the Cabinet or a dissolution or any of the various constitutional devices in operation, they can be made to set up another Government which will take the responsibility of producing a proper financial measure on the basis of which the House of Commons with the majority it then obtains can vote the taxes and collect them.

Now if we examine whether such a position can be made workable in India, I say that even now the Indian Legislative machinery has to some extent been assimilated to the procedure which has been established in the House, thanks to the efforts of those who laid

down the procedure in 1920 and 1921 under your guidance, My Lord. There is, as Your Lordship will recollect, the Provision and Collection of Taxes Act, by means of which it is possible for the Finance Member to continue to levy taxation until whatever constitutional difficulties or crises may arise in the House are got over. You may also have the provision which my friend, Sir Tej Bahadur Sapru, suggested, that until the new Budget is passed, the provisions of the old Budget shall be enforced. There may also be a third method, also employed in this country in so far as the collection of taxes is concerned.

There are, as Your Lordship will recollect, permanent Acts of Parliament by means of which taxes are collected permanently, and also annual Acts of Parliament by which taxes are collected. In so far as the control of the Legislature over finance may be complete, this division has been made so as not to put the financial mechanism of tax collection wholly into the melting pot, and such a device can also be adopted. In fact I suggest that when we start the new constitution, the permanent taxes which would enable the Government to obtain its absolutely minimum quantity of supplies can always be put on the Statute book. That would enable these people to find the money.

My Lord, there are various devices that can be adopted, I do not think that where a financial measure is rejected there is no other way except that of certification and the use of a method which has been very rightly condemned by Sir Tej Sapru as the negation of responsible Government and as the means of arousing hostility in the Legislative Council. Therefore, with great deference, My Lord, I submit that the idea of certification should be absolutely abandoned so far as the Indian financial provisions are concerned.

Then, My Lord, there was another idea that was put in which I think was at the bottom of the proposal that certification in one form or another may be inevitable. That is this. You, My Lord, pointed out that if the Army is going to be a reserved subject, or if the Army with the provision for the payment of the Army charges ought to be on a contractual or any other basis and they are put on the Consolidated Fund, as is done in all modern Governments, that does not necessarily end the difficulties of the Governor-General if he is made responsible for the administration of the Army. You pointed out that it is one thing to say that he can draw on the Consolidated Fund, and it is another thing to say that the money is in the till; and therefore the Governor-General must make sure that the money is in the till. Now, My Lord, I do not think, in order to make sure that the money should be in the till, the Finance Member should surrender his powers of proposing measures of taxation in the Legislature or that the Viceroy should obtain powers by means of an ordinance or of any certification measure, to raise new taxes. If we proceed on the assumption that the Finance Member, the moment that there is a provision in the constitution that the Army charges must be met and must be part of the Con-

solidated Fund, and we all assume that the Finance Member, as Mahatma Gandhi very rightly pointed out, is a sensible and an honourable man who would always make sure that the payment of these Consolidated Fund charges which are a first charge on all revenue are always available, then the money that is necessary would always be available there. If that money is not available, if circumstances intervene which deplete the Treasury, then I say that is a phenomenon which will not be peculiar to my country. It has occurred in many other countries; it has occurred in this great country. The country has been faced with many such difficult situations and we have had any amount of controversy in India with regard to the manner in which the Government has been using many of its separate funds for the purpose of paying unemployment dole, and the like. All I am saying, Sir, is that so far as the Finance Member's willingness to place the funds, and his ability to do so, is concerned, there can be no question. So that if they are left in question, then the contingency that arises is a contingency that arises in all modern properly governed countries and must be dealt with in exactly the same manner as it has been dealt with elsewhere. If the assumption is that the Indian Finance Member will from sheer " cussedness " so manipulate the finances in the till as to leave no money for the Army or any of the Consolidated Fund charges, and thereby compel the Governor-General to resort to measures of taxation, I say, Sir, that that is an assumption wholly unwarranted and absolutely unjustified.

In the next place, if all these payments ought to be made from the Consolidated Fund, if interest charges, if Military charges, and if payment of all the important Civil Services ought to be made a first charge on the Consolidated Fund, then what is the purpose which the Finance Member can have in cutting off his nose to spite his face? In that case the Finance Member would not be able to pay the salaries of the staff; the Finance Member would not be able to pay the instalments of interest that might be due. Thereby he would diminish the credit, and all for the purpose of reducing the money that may be available for the Viceroy to draw upon for the purpose of making military payments, I say, Sir, that that is an assumption which is wholly unwarranted. If the power to levy the money is ensured to the Viceroy, and we accept the proposition that these Army charges are to be made part of the Consolidated Fund, if that class is accepted and honoured, I think it is equally right to assume that the Finance Minister will honour the other obligation of finding the money for which there is a legal authority in the Governor-General to draw. Indeed, My Lord, the financial arrangement and the stability of the financial system is the joint concern of both in this matter, and it is indeed very much more ours than yours. We are very much more interested in the maintenance of the stability of the financial administration of our country than those whose only interest in it is the drawing of their interest or the payment of their money when it falls due. I do not say for a moment, Sir, that those who have managed our finance have

not kept the interests of our country before them to the best of their lights, but what I am failing to understand is, why it should be suspected that when we are put in their place we would begin to play " ducks and drakes " with the finance in a manner which you do not suspect your own people of doing.

The other matter, My Lord, upon which I desire to say a few words is in regard to the loans. I am fully bearing in mind the observations made by you in regard to this matter, and all that I want to say at this stage is that apart from the proposals we have made in the Federal Finance sub-Committee as to the constitution of a Loans Board and the manner in which future loans should be served, we have to recollect that so far as the present financial position of India is concerned in regard to loans, she is in an exceptionally strong position, and in so far as our assets are concerned, in so far as what is called the productive part of our sterling and rupee debt is concerned, it is covered by assets which are considered first-class, and if we made the arrangements which were referred to yesterday in regard to the constitution of a properly framed Railway Board it would be clear that in so far as our requirements in respect of railway capital expenditure are concerned, or any other form of productive activity, there can be no better method of securing the confidence of the public than what the Indian Government have been providing. The Indian Government have been providing by a very liberal and, as we all considered at the time, by an overliberal provision of sinking funds, both to the general revenues and under the railway budget, for the service of these debts; and with these assets before them and with the Railway Board properly constituted, there can be no difficulty whatever in obtaining our loans in the market. With the present position of the market it is a different thing, but talking of a normal condition of things I do not see how India can at any time be expected to be in such a position that she would need the guarantee of people in this country with a view to making sure that her credit is safe. Besides, My Lord, except for productive purposes, the need for going to the market for unproductive debt has not been apparent so far as India is concerned for a number of years. There has been, no doubt, a large amount of floating debt that has been incurred from time to time to meet Treasury requirements, and it has been covered subsequently. There are, no doubt, maturing obligations which have soon to be met. I agree that in all these matters arrangements will have to be made so that India will not be put in a position of exceptional difficulty in meeting her financial obligations as they mature in the coming four or five years. In this matter we think what is required is an arrangement which will enable India to put her first-class financial position and securities before London in a proper way for obtaining credit, and not have the control from Whitehall, but have control not only of loan operations, but of the Budget, of the currency, of foreign remittances, and every matter of expenditure with which the future Federal Government will have to deal.

I therefore feel that so far as India's loans are concerned we do not think that the continuance of control from Whitehall is absolutely essential. We have been told that the British investor is nervous. We have been told, for instance, that the British investor has always relied upon the Secretary of State. I say the Secretary of State in Council is not a particular person. He is a changing personality. He is a corporation in the view of the law. In fact, unlike any other Government representative, the Secretary of State in Council can sue and be sued, and, therefore, so far as his position is concerned he is to be judged not by the fact that he is at the India Office in Whitehall and is a member of the Cabinet, but because he is put in charge of the affairs of a country whose Budgets are open before the public, whose assets are equally before the public, and whose balance sheet they have the means of examining. In so far as we are able and prepared and ready to put the same facilities before the public, I do not see why the mere fact that the Secretary of State exists is any more reason why the investing public should say we will trust him and no other. I think if any such proposition is seriously advanced it is neither just to those people who are administering Indian finance nor just to the people of India. If after all these years you are going to say the Britisher is the man who can get money for you and you can go to nobody else, I say it is no credit to your Government to say that that must continue.

For these reasons I think there is absolutely no difficulty whatever in the way of securing our financial stability, in the way of our securing a properly balanced Budget, and in the way of our securing essential supplies by investing an Indian Minister responsible to the Legislature with the power to manage our finances.

Chairman : Thank you.

Mr. Benthall : May I ask Mr. Iyengar where he would get the money if the fact is true that he would not be able to get it in the London market?

Mr. Iyengar : As I say I have not been told that you cannot get money in the London Money Market unless it is endorsed by A, B, or C. Until I know it is so, and why it is so, I shall never accept that statement. On the other hand I have excellent securities to advance.

Mr. Benthall : May I make one observation? It is in connection with the Statutory Finance Council which is proposed by Sir Tej Bahadur Sapru. My community in India is satisfied with the existing state of things, but my Delegation and a good deal of commercial opinion in India believes that very considerable possibilities are opened up by the proposal of Sir Tej Bahadur Sapru regarding the Statutory Finance Council which he dealt with in his speech. We held that view in India, and after coming to this side a private exchange of views of a most sincere and earnest nature has shown that this avenue does hold out undoubted possibilities of reaching a very large measure of agreement in happier financial

times, perhaps not now. In our opinion the Council should have wider functions than that indicated by Sir Tej, and in various details there is room for argument.

But I would ask that when the major problem which is agitating our minds just now is settled, this proposal should have further investigation by His Majesty's Government, and I would like to put forward the request that this proposal should be referred to in the Lord Chancellor's Report as a subject worthy of further investigation.

Chairman : Thank you. Sir Akbar Hydari, do you wish to make any observations?

Sir Akbar Hydari : I wish to say that I feel that the proposal as to a Statutory Finance Council has very great possibilities. I should like to make it clear that, while the Reserve Bank when introduced might be the authority to manage the currency according to the policy imposed by the Legislature, still the functions of this Financial Council will be much wider according to the ideas which I believe we entertain. I am confident that if such a Council consisted of men who considered all these propositions that were brought before them as purely business propositions, it will ensure a measure of confidence which will be sufficient to satisfy the investing public. I feel as strongly as you, Sir, have expressed it and as Mr. Pethick-Lawrence has said, that it is necessary that we should inspire every confidence in the investing public. It should be through the institutions that we create now, and through our future conduct that we should gradually allow the safeguards which are at present being implemented only to create that confidence, to become gradually atrophied by not being used. I think, Sir, that we ought to consider all these propositions with regard to safeguards and so forth as not being any reflection on our self-respect, but as propositions which have been created in view of our long connection with England and also in our own interests, because that connection will continue for a very long time and I hope for ever.

I have had some experience of financial transactions in this country, and I must say that the assistance I have received here is such that I should be very sorry if that co-operation were at any time jeopardised. Therefore, I hope that my British-Indian friends and those on this side of the table will both try to approach this question purely as a question of finance and business, trying to bring about such an arrangement as will, on the one hand, stabilise the credit of India within the whole field in which that credit will have to be exercised and, on the other hand, will satisfy everybody that whatever is done is really done in the true interests of India as a constituent element of the British Empire.

Chairman : Thank you.

Sir Purshotamdas Thakurdas : May I say one word about the Statutory Financial Council to which Mr. Benthall referred?

Chairman : Yes.

Sir Purshotamdas Thakurdas : The question was discussed between a few, but nothing definite was arrived at. As Mr. Benthall has suggested that this should go into the Report, I want it to be on record that as far as I am concerned I do not commit myself to it. There are many loose ends which require to be tied very carefully and clearly before I can give my consent to a Statutory Financial Council of the nature indicated by Mr. Benthall. At the same time, however, I concede that there may be in it germs of a satisfactory agreement as far as India is concerned when the details are considered. But until that is considered I do not commit myself to any part of the Statutory Council to which Mr. Benthall referred. As a matter of fact when that was discussed between a few friends here, it was a Financial Council or a Council of Financial Experts in an advisory capacity and nothing more.

Mr. Iyengar : And that is the idea of Mr. Benthall even now.

Sir Purshotamdas Thakurdas : The word " Statutory " I heard for the first time to-day at this table, and I myself fail to see the utility and necessity of a Statutory body like that, even after the Reserve Bank has come into being, and here I refer to what Sir Akbar Hydari said just now. Therefore, I feel that the thing is now appearing to expand, and I am anxious to have it on record that I keep myself perfectly open regarding the details which require to be considered.

Sir Tej Bahadur Sapru : Will Your Lordship permit me to say just one word?

Chairman : Yes, Sir Tej.

Sir Tej Bahadur Sapru : The idea proceeded from me yesterday and I wish to explain the Statutory Advisory Council that I had in mind.

Sir Purshotamdas Thakurdas : Is it Advisory or Statutory, please?

Sir Tej Bahadur Sapru : It must be under the Statute; you cannot have a Council like that by mere administrative order. I have no fear of the word " Statutory." My idea was this, that the Statute itself should provide for the establishment of an Advisory Council during the period of transition in regard to matters of exchange and currency. If experience shows it to be of utility, we might perpetuate it.

Chairman : I follow that.

Sir Purshotamdas Thakurdas : It would mean that the Statute would not lay it down as a permanent body.

Sir Tej Bahadur Sapru : During the period of transition. I said so in my speech yesterday.

Sir Purshotamdas Thakurdas : Does it mean during the period of transition until the Reserve Bank is established?

Sir Tej Bahadur Sapru : Yes; that is what I said in my speech yesterday.

Chairman : I think you have made the position quite clear. Yours is a temporary thing for the purpose of seeing how it will work, and, if it works satisfactorily, then you think it should be perpetuated—at any rate continued.

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(The Committee adjourned at 4-15 p.m.)

PROCEEDINGS OF THE FIFTY-SECOND MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THURSDAY, 26TH NOVEMBER, 1931, AT 11.0 A.M.

Discussion on Order of Constitutional Development—concluded—
(continued from page 1190).

Chairman : Your Highness and Gentlemen, yesterday Mr. Jinnah was good enough to ask me to give a ruling on certain matters. The position was this. Mr. Lees-Smith and Mr. Wedgwood Benn raised a point of very great importance, namely, with regard to the future work with reference to getting a Federation for India, and I allowed a discussion on it which I think was a very valuable discussion; but at the same time I am afraid it was a very irregular discussion, and for this reason. I do not think it was within our terms of reference. The terms of reference, if you will be good enough to look at them, are first of all to be found on page 7 of the Interim Report, where you will see that it says " The sub-Committee "—that is, ourselves—" was appointed to consider and report upon the following four of the Heads of discussion which were framed for the Federal Relations Committee," and then these are given :—

> " No. 1.—The component elements of the Federation.
>
> No. 2.—The type of Federal Legislature and the number of Chambers of which it should consist.
>
> No. 3.—The powers of the Federal Legislature.
>
> No. 6.—The constitution, character, powers, and responsibilities of the Federal Executive."

On page 15 you will observe that further Heads were referred to the sub-Committee, that is to say :—

> " (4) The number of members composing each Chamber of the Federal Legislature, and their distribution among the federating units;
>
> (5) The method whereby representatives from British India and from the Indian States are to be chosen; and
>
> (6) The constitution, character, powers and responsibilities of the Federal Executive."

I am afraid none of those terms of reference quite cover the point raised by Mr. Lees-Smith, but his advocacy was so good that

I felt bound to give way to it, and I do not regret it for a moment, because I think we had a valuable discussion; but at the same time I am going to report to you what I have done, and then I am going to give my ruling.

What I have done is this. I reported to a number of members of the Cabinet last night exactly what has taken place, and I told them the names of all those who have spoken and their views. What I am going to do is this. A special Cabinet is going to be summoned for to-morrow morning to consider it and I am going to ask those people who did not speak yesterday to speak now. That is to say, I am going to ask almost immediately Mr. Jinnah, Sir Muhammad Shafi, Mr. Gavin Jones, Mr. Iyengar, and Pandit Malaviya, and I should like to have your opinions.

Sardar Ujjal Singh : I did not speak yesterday.

Chairman : Yes, and Mr. Ujjal Singh. But with regard to making a Report, I do not propose to make a Report because I do not think it is within the terms of reference, and I will not do it. I call on Mr. Jinnah.

Mr. Jinnah : My Lord Chancellor, I want to say what our position is with regard to this question which has been discussed by so many members. As I understand, the question is that we should impress upon the Government by expressing our opinions here that the responsibility at the Centre should be brought into being simultaneously with the Provincial autonomy. That being the question, I want our position at least to be made clear. I want first of all to make it quite clear to this Committee what the position of the Muhammadans is. We have all along, from the very commencement of this Conference, made it clear that so far as the Muhammadans are concerned we are not going to stand in the way of the constitutional progress of India. Last year I said this—if you will forgive me for quoting my speech.

Chairman : By all means.

Mr. Jinnah : Because it would be better to put it in the same language than in different language. I said this:—

> "We have now come to a stage, however, when I think I shall be failing in my duty if I do not tell this sub-Committee what the Mussulmans' position is. Sir, I maintain that the Hindu-Mussulman settlement is a condition precedent, nay, it is a *sine qua non* before any constitution can be completed for the Government of India; and I maintain that unless you provide safeguards for the Mussulmans that will give them a complete sense of security and a feeling of confidence in the future constitution of the Government of India, and unless you secure their co-operation and willing consent, no constitution that you frame for India will work for 24 hours."

That is the position to-day, and we have tried our utmost. I do not wish to enter into any controversy.

Chairman : I quite agree with you, you have tried your utmost.

Mr. Jinnah : I have to say most painfully, under the greatest regret, that we have so far failed to bring about a settlement of this minorities question.

Now, Lord Chancellor, when we reached that stage we realised that if we discussed these very important questions connected with responsibility at the Centre there would be no reality about these discussions. It is the same feeling that my friend Sir Tej Bahadur expressed yesterday; he realised for another reason that there is no reality about these discussions, and he gave you the warning in the friendliest, the firmest and the plainest language regarding what his position was. Similarly, when we decided to reserve our opinion on these vital questions, we intended to convey the friendliest, the firmest, and the plainest warning that you cannot complete your constitution making unless the Minorities question was settled.

I know perfectly well it is said: " Well, never mind that; let us go on; surely we can discuss the other questions." But I tell my friends here and I tell the British delegates that there is a real and a serious and a grave apprehension in the minds of the Muslim delegates here and in India, that if you go on participating in the structure right up to the roof, and when everything is completed, this constant assurance that, of course, the communal question must be settled, that it is essential, may recede into the background to such an extent that we might have a finding, a decision against us *ex parte* almost; that is the reason why we have adopted the course that we have been compelled to adopt.

I have said this and I say this again. I am saying this on behalf of the Muhammadans, and you must remember what the feeling is in India to-day. You must have had some inkling from the newspaper reports that have been wired here from day to day; but you do not know yet the real feeling that is behind it. Let me tell you that we are in a grave difficulty here. Nevertheless, we do not wish to be misunderstood in any way. Sir, Muhammadans do not wish to put any difficulty in the way of the constitutional advance of India. Muhammadans also feel—and I have no difficulty in stating to you frankly—that mere Provincial autonomy being brought into being will not command the support of the better mind of India. But I want you also to remember that no constitution that you will frame will be acceptable to the Muhammadans unless their demands are complied with. My Lord, it is easy to break the Constitution; it is far more difficult to work the Constitution. The work of destruction is easy; the work of construction is more difficult. I appeal to my friends here: Can they complete any constitution for the Government of India without the minorities question being settled? Can you complete it? You may discuss it if you like. Therefore, I say, that the basic difference which goes to the root of it is the question of the minorities.

I do not wish to add anything more except to say this. Mr. Lees-Smith, who raised this question, said to us that it will take

three years. I am not sure. Estimates are made by optimists, by our friends and sympathisers, that this can be achieved in three years. As I say, I am not sure. It seems to me that some of our friends here are putting forward a proposition which might be got hold of, but there is a danger, and I warn my friends of that danger. You say, no Provincial autonomy to start with. You say, Provincial autonomy and responsibility at the Centre must take place simultaneously. I am with you in that proposition.

I have no hesitation in saying that I think the better mind of India will not accept anything less, but do not be dragged into a maze. Sir Tej Bahadur Sapru himself said he thought it would take less time than three years, but he was open to conviction, and if it were made plain to him that that period were necessary he would not mind it. I cannot imagine how you are going to complete the federal structure of the Government of India on the basis of an all-India Federation within any period that you can reasonably expect India to wait for, and I say, My Lord—I say it with very great respect to all those who have irrevocably committed themselves to the scheme of an all-India Federation—turn your vision nearer to British India. It is not too late. I think you will make quicker progress than you expect to by hugging and hanging on to this illusion and mirage of an all-India Federation.

Lord Reading : May I be allowed to ask one question of Mr. Jinnah? I have followed with the greatest interest what he has said, but I am in a difficulty. The question I want to put, if he can answer me—I cannot press it, of course, if it is not convenient for him to answer it—is: In the absence of a communal settlement by agreement which is the present position, what is the alternative, that Mr. Jinnah would suggest? As I understand it he says that you cannot arrive at any conclusion—I do not want to argue about it—at any rate from the Mussulman point of view until you have a settlement. What is not clear to me is: What is it that Mr. Jinnah suggests from the Mussulman point of view is to be done in the absence of a communal agreement as to electorates and so forth?

Mr. Jinnah : Well, Lord Reading, I am perfectly willing to answer that question on my own individual responsibility. The answer really is this, Lord Reading, that you cannot possibly enact any constitution without a Hindu-Muslim settlement. But when you are talking of a settlement or an agreement I understand that the agreement must be brought about between the various interests themselves on almost all vital questions before you can set up the constitution for an all-India Federation.

It is not only the question of a communal settlement. That is exactly the reason, Lord Reading, why I said that that is a process which cannot be accomplished within a measurable distance of time, in my judgment, and I say that the responsibility is the responsibility of the British Government to-day in India. Lord Reading, you are not going to abandon your responsibility in India; you are not prepared to do that. You are prepared, as far as your Govern-

ment is concerned, to give a substantial measure of advance in the shape of a limited kind of responsible government. If that is your policy, then, after having had months and months last year and months and months this year to discharge it, it is your duty to India, not in deference to the opinion of one section or of one party here or of one party there, to decide what you propose to do in India. It is your duty; it is your responsibility.

Let me tell you that whatever differences there may be here one thing is certain: you cannot carry on your Government as you are carrying on at present. Take the decision, and the co-operation and support of that decision of yours will depend on the nature and the character of your decision, and on the justice of it. If there is a better mind in India, and I say there is, and if your decision is one which is reasonable, which is just, and which will appeal to the better mind of India, it will receive the support and co-operation of India, and, believe me, you will then lead India to the path of prosperity, of happiness and of peace.

Chairman : We will now hear Sir Muhammad Shafi.

Sir Muhammad Shafi : Lord Chancellor, when last evening I heard of the important point raised by Mr. Lees-Smith in the meeting of this Committee yesterday, I decided to attend the meeting this morning, in spite of the fact that I am leaving for India by the mid-day train, in order to offer my respectful advice to His Majesty's Government.

My friend Mr. Jinnah, in his statement made on behalf of the Muslim delegation, has referred to what we hold to be the *sine qua non* of any constitutional advance in India, namely the settlement—if possible by mutual agreement; otherwise by His Majesty's Government—of the communal problem with which we are confronted at this moment.

Lord Chancellor, I go back to India with my heart full of grief that these communal questions have not been settled as a result of mutual agreement between the representatives of the various communities themselves. So far as the Muslim delegation is concerned, I do not wish to put the blame of this failure to arrive at an intercommunal settlement upon any party whatever. But this much I do say, that the Muslim Delegation have tried their level best. They tried their best last year, and they have again tried their best this year, to bring about a satisfactory settlement of the intercommunal problems. We have failed, and the heart of every sincere well-wisher of India's constitutional progress must be full of sorrow and full of shame, because of that failure. But does not His Majesty's Government have the responsibility cast upon its shoulders because of that failure to come to a decision with regard to the various issues involved in this controversy? On whom does the constitutional responsibility ultimately rely? Does it not lie on His Majesty's Government and on the British Parliament? I say it does, and the British Government will have to give a decision, for unless and until you give a decision, how can you frame your constitution for India, the constitution which you contemplate?

My Lord Chancellor, assuming that the constitution which you intend to frame does include in it—and it must include, otherwise it will not work even for twenty-four hours, as my friend, Mr. Jinnah, has said—Mussulman safeguards, as well as safeguards for the other minorities, then my advice to His Majesty's Government is "Go ahead." Go ahead, not only with your Provincial autonomy, but also with the responsibility at the Centre. The better mind of India at this moment is prepared to accept the safeguards with regard to defence, with regard to political and foreign policy, and with regard to finance, which we decided upon at the first stage of this Conference, and as I said in my speech at the Plenary Session, political aspirations, if not satisfied at the psychological moment, have a way of growing. What may satisfy the better mind of India to-day may not satisfy even that mind three years hence. Therefore, my advice to His Majesty's Government is, to come to a just decision, a decision which will give the eighty millions of His Majesty's Muslim subjects their rightful place in the India of the future, and a decision which will give the other minorities also a rightful place in the India of the future. Go ahead, not only in the Provinces, but also at the Centre. That is the advice of one who has all his life believed that the future of India lies within the British Commonwealth of Nations, and who believes that a happy and contented India will be a source of immense strength to that Commonwealth.

Chairman : Sir Muhammad Shafi, let me thank you not only on behalf of the Committee, but let me thank you personally for coming here at the very last moment to give us the benefit of your advice. I shall take care that almost every word you have said is conveyed to the proper quarters. May I, in conclusion, wish you a very happy and prosperous voyage?

Sir Muhammad Shafi : Thank you, My Lord Chancellor.

Chairman : Now, Mr. Gavin Jones.

Mr. Gavin Jones : Lord Chancellor, though we appreciate the opportunity to get down to realities and to state what we think ought not to be done, I personally must say that I think this debate is a mischievous one. My reasons for saying this are that, although Mr. Lees-Smith has no doubt brought forward this debate with all earnestness, I fear that it will have a very bad effect on the outside public. In the first place, the diehard element in England will say that the Labour Delegates are endeavouring to put difficulties in the way of the Government.

Mr. Joshi : That is their job.

Mr. Gavin Jones : In the second place, I must take exception to the speeches that were made yesterday in the threatening tone in which they were made, threatening non-co-operation and worse. That will have a very deplorable influence in India. Having said that, Sir, I want to say what is the view of our Delegation. We ourselves, of course, wish that Provincial autonomy should be introduced prior to Federal responsibility, for it is quite inevitable that

the constituent States should be created prior to Federation. We, however, stand by the principles which were agreed to at the last Conference, and do not think that a measure which only deals with Provincial autonomy is adequate. It is quite evident that our fellow delegates will not accept only Provincial autonomy, and, Sir, you cannot force self-government on those who have got to work the constitution. The result of forcing merely Provincial autonomy on them will be that they will wreck the constitution.

Therefore, Sir, we think, although it may mean delay, that a Standing Committee should be established to continue the constructive work which has been done at those Conferences in creating a framework for the whole scheme, with a definite programme, for the necessary transition stage in the progress towards Federation. And I want to reiterate here, Sir, that there must be no transfer of responsibility without Federation. Now, Lord Chancellor, I wish to state my personal view. I have been conscious throughout this Federal Committee of the unreality of the discussions. The reason for this is not far to seek. The fundamental issues have not been dealt with. The real fact of the matter, Sir, is that we were not ready—anywhere near ready—in India for this Conference. I had hoped that after the last Conference we should have established boundary commissions, franchise commissions, and financial relations commissions to be followed up by provincial conferences to create our constituent States. Instead of that, Sir, the Government, and I must say the politicians of India, were obsessed with the idea that the Congress must be represented at another Conference here and that Mr. Gandhi should come to London. A year has passed in the endeavour, as I believe, to reconcile the irreconcilable. As far as I can see, Sir, Mr. Gandhi has repeated the Congress demand and no other constructive proposal has come from the Congress.

Was it necessary for Mr. Gandhi to come all this way to do only that? At the last Conference, Sir, in Plenary Session, I asked that the road should be made clear for Indians themselves to attain responsible Government, for responsible Government is not something that can be granted. It has got to be achieved. I also added that in the meanwhile India must be governed, for it is the first duty of a Government to govern. Now, Sir, in my humble opinion, India has not been governed. Lawlessness has been condoned, and lawbreakers conciliated. The impression has got abroad in India that the Government is about to quit. The position, therefore, now is that we have got to restore peace and tranquillity, for there can be no advance in India either Provincial or Central without peaceful conditions and a balanced Budget.

The point I wish to make is that the Administration is in great difficulty. Official after official has said to me that something definite must be decided—good, bad or indifferent. They cannot carry on in uncertainty. My main point is this, Sir. I want to plead with the British Government to be definite and to state what their intentions are with regard to India. I would like them to adhere to the principles that were agreed to at the last Conference.

I would like them to state very clearly what they consider are the necessary reservations. I would like them to state what safeguards must be imposed; I would like them to state what they propose to do in the transition stage in regard to Law and Order in the Provinces, and having stated this clearly to make the road clear for the progress of constructive work and for filling in the details.

Now, Sir, before I end I must refer to the communal question, because that is fundamental. It is essential if any progress is to be made that the communal question should be settled.

Now, Sir, I should like to make an appeal to my Hindu friends. The first step towards a settlement is an acceptance of the principle of separate electorates. We know what the objections are; everybody knows what the objections are. But, Sir, I should like to point out that Lord Morley, Mr. Montagu, and Sir John Simon have one and all tried to solve this problem, and have all come back to the conclusion that separate electorates are essential. If only our Hindu friends will agree to that principle, I think the gulf is bridgable. Here again I would give my personal opinion, and it is that when you get down to the Boundaries Commission I think there are possibilities there of solving the communal problem in regard to some of the Provinces.

Now, Sir, Mr. Jinnah has said that a United States of Greater India is a mirage. I do not agree with him; I think that it is the only solution of our problem. As long ago as 1926 I held this ideal, and in a speech I made at the European Association, in which I asked the members to consider the political problem, I envisaged India as a United States of India under the Crown. It is a great ideal, and all great ideals are difficult of attainment; but, because it is difficult, therefore we must strive on and on. Let us persevere, for, as the old saying goes, Rome was not built in a day. Therefore, let us build slowly but surely.

Sardar Ujjal Singh : Having been unwell for the last two days, I have not had the pleasure and privilege of listening to the speeches yesterday. I want to state my position and that of my colleague at the Round Table Conference on the question under discussion.

Sir, we are of opinion that responsibility at the Centre should be introduced simultaneously with Provincial autonomy. The work of the Round Table Conference will prove a failure, and all the time and money spent on it as entirely wasted, if we go back with only some advance in the Provinces and mere assurances with regard to Central responsibility.

I do not agree with Mr. Jinnah that all-India Federation is a mirage and a delusion. I believe the patriotic spirit of the Princes, a spirit which they have shown all along, will make all-India Federation an accomplished fact. The Princes have taken time to adjust their differences with regard to their grouping, but they have expressed their readiness for the acceptance of a committee of impartial people if they are not able to settle their differences by that time. I recognise that time is needed to settle the details. By all

means take the necessary time; India will not grudge it. But, believe me, no party or section of India will be satisfied with a mere dole of Provincial autonomy. India at this moment needs broad-mindedness, a higher statesmanship, and a more generous treatment than mere tinkering with reforms.

Sir, I have made these remarks with this reservation, that any constitution, whether Provincial autonomy or Central responsibility, will not be acceptable to the Sikhs unless their interests are fully safeguarded. In this connection I endorse the remarks of Sir Muhammad Shafi, that it is the responsibility of the Government to give a decision with regard to the communal question, a decision which I hope will be just, impartial, and equitable.

Mr. Iyengar : In associating myself entirely with all that fell from this side of the Committee by way of protest against what we had reason to believe were the intentions of the Government, I desire to say just a few words regarding my own position. I was one of those who were invited, to use the words of the Prime Minister's speech, to co-operate on the general lines of the declaration which the Prime Minister made on the 19th January last. It was after the Irwin-Gandhi pact that we were invited, and we are here to participate in the deliberations on the basis of His Majesty's Government's declaration and on the basis of that pact. I therefore, My Lord, have every right to take my stand on that declaration as the basic position from which it would not be right and it would not be proper for His Majesty's Government to go back. That declaration is on the footing of a Federal Central responsibility and safeguards. To consider now that the deliberations of this Conference have any relation to mere Provincial autonomy is to put the entire Conference out of the field of any reality of constitutional work in the future. My Lord, what I am troubled with is, that the Right Honourable the Secretary of State, in describing what he did yesterday as something like a melodramatic tragedy, said, if I recollect rightly, that there were no irrevocable decisions on the part of His Majesty's Government. I trust that His Majesty's Government have not come to any revocable decisions.

Sir Samuel Hoare : I can tell Mr. Iyengar at once that we are quite genuinely waiting to hear opinions all round, and that is the reason of the consultations we have been holding this week. We are still holding consultations, and quite obviously we shall come to no decision until we have finished our consultations.

Mr. Iyengar : I know about that. The words " irrevocable decision " suggest that there were revocable decisions. The reason why we felt that there was ground for our recording the protest that we did, is to be found in the speech which Sir Samuel Hoare made on the Monday before last in this House. He said :—

> " We hope, and we intend—and the Prime Minister will himself make allusion to the way in which he will carry out his intention—to maintain in one way or another consultation with representative Indian opinion at every effective

> stage in the process of constructing an all-India constitution."

The method which he then suggested was in the contemplation of His Majesty's Government, was elaborated by him later in the following passage:—

> "The fact, therefore, that this particular chapter must, in the nature of things, be brought to an end at some time does not in the least affect the general attitude of the Government in carrying on its expressed intention to maintain the closest possible liaison with Indian opinion and to take representative Indians into consultation in the future processes that are before us."

Sir Samuel Hoare was even more definite towards the conclusion; he then said:—

> "Well, Lord Chancellor, I do suggest that as practical men, we had much better face these facts and realise, that being so, it is really better to bring this chapter to an end. I say 'this chapter,' because it by no means closes the book."

Sir, it is because of these statements and because of various things that have happened, to which I do not want to make any particular allusion, that I say we have a right to complain that we have been brought here this year to construct and co-operate with you in the establishment of an all-India Federation with Central responsibility and such safeguards as we may agree upon; and we are now told that we must bring this chapter to an end and go forward.

I am glad to hear that His Majesty's Government are prepared to reconsider the position. If they do reconsider the position, I say, and I claim it as a matter of right for those who have been invited this year, that it is not fair to them to say: "You have come here to deal with Central responsibility; we have heard your speeches and your suggestions; now we proceed to deal with only Provincial autonomy." The last words of Mr. Macdonald were:

> "His Majesty's Government will strive to secure such an amount of agreement as will enable the new constitution to be passed through the British Parliament and to be put into operation with the active goodwill of both countries."

It is that that we now want, Sir; an Indian Constitution dealing with Provincial autonomy, as well as Central responsibility. Without that we think it would not have been right for you to have invited us to come and take part.

*Pandit M. M. Malaviya** : My Lord Chancellor, I pointed out yesterday that the Congress has for a long time past been asking for responsibility to be established in the Central Government of India. I read from a passage of a criticism which I have published of the Montagu-Chelmsford Report: How oppressed we felt that the Montagu-Chelmsford Reforms did not provide for the establishment

* Continued from page 1186.

of responsibility in the Central Government. That was in 1918. Since that time the Congress every time it met recorded its conviction that full responsible government should be established in India at the earliest possible opportunity.

In 1924 the Legislative Assembly discussed the subject and passed a resolution by 76 votes against 48, which included a number of officials, demanding the establishment of full responsible government in India. Since that time, since 1924, on several occasions the Assembly again drew the attention of the Government to the necessity for the establishment of such government. In 1927 when the Simon Commission was appointed very great indignation was felt in India that not a single Indian had been thought to be fit to occupy a seat on that Commission, which was to enquire into the affairs of India and to make recommendations for the future constitution of the Government of India. While the boycott of that Commission was practically complete many discussions were going on as to what the next step should be, and Lord Irwin found that there was a great necessity for taking some action which would undo the evil effect which had been produced by the exclusive composition of the Simon Commission and lead the way to further progress. You will remember, My Lord, that Lord Irwin decided to take leave and to come to England. On the eve of his departure for England on leave I took the liberty of writing to him a letter from which I wish to read two short extracts, in order to remind this Committee of the state of things which had been established in India at that time. In 1928 the National Congress in session at Calcutta passed a resolution demanding the establishment of Dominion Status within the year 1929. In the middle of 1929 Lord Irwin was coming here on leave, and in my letter to him I wrote:—

> "I have travelled a good deal during the last two months, in the Central Provinces, in Madras, and the Punjab and Sindh, and have addressed very largely attended meetings and held private conversations with numerous men. I have found abundant evidence everywhere that the desire of the people for the establishment of complete self-government is growing keener and wider every day. The ideal of Dominion Status still holds the field with the majority of thoughtful people. But it is accompanied with a widespread belief that England will not agree to establish it and that freedom will have to be fought for and won. The ideal of complete independence is consequently gaining an increasing number of adherents. The minds of millions are fixed on the 31st of December, 1929.
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> The regrettable murder of Saunders and the throwing of the bombs in the Assembly are clear indications that a new temper is growing, particularly among the younger generations. It is only a very few of us who can talk of Dominion Status at a public meeting without interruptions in favour of complete independence and without being exposed to ridicule. The absence of any pronouncement on behalf of the British

Government in favour of the probability of Dominion Status being established at the next revision of the Statute is helping to accentuate feeling against the Government and weakening the position of those of us who stand for Dominion Status.

The advent of the Labour Government to power at this juncture is from our point of view a happy event. It is much to be desired that the Labour Government will take the situation into its early consideration and take some action which will give an assurance to Indians that the demand for Dominion Status is going to be seriously considered."

Now, Lord Irwin had said in one of his speeches that he would faithfully represent the wishes of the people of India to His Majesty's Government. Referring to that, I said:—

"You have promised that you will strive to fulfil to the best of your ability the duty of interpreting as faithfully as you may, the hopes, the feelings, the desires of the Indian people to His Majesty's Government and 'to beg His Majesty's Government even to place the most favourable construction on all their proceedings.' I have no doubt that Your Excellency will strive to the utmost of your power to do so. But when you have done all you can pray remember that neither you nor your countrymen, who have happily not known the pain and humiliation of living under a foreign rule, can fully realise the depth of our feelings and desires on the question of our regaining freedom to administer our own affairs. If therefore you desire to be fully fair to us and to establish our relations permanently on a basis of friendship, honourable and beneficial to both countries, I hope you will not try to bring about any agreement amongst yourselves, if it falls short of the establishment of a Dominion Government, without affording opportunity for a full discussion of the matter to the accredited representatives of British India and the Indian States at a Conference invited by the Cabinet of England. I feel very hopeful that such a Conference will bring about a thoroughly satisfactory solution of the great problem that confronts us."

I am glad to think that a declaration was made by His Majesty's Government when the Viceroy went back to India. That was on 31st March, 1929. In pursuance of that declaration the Round Table Conference was called. I have mentioned this to remind the Committee that throughout the demand has been for the establishment of full responsible government in India. The Congress met in December, 1929, and decided upon passing a resolution for complete independence. That was on 31st December, 1929.

Subsequently, on the 19th January, 1931, the Prime Minister here made the declaration to which my friend has referred. This declaration was as follows:—

"The view of His Majesty's Government is that responsibility for the government of India should be placed upon

> Legislatures, Central and Provincial, with such provisions as may be necessary to guarantee, during a period of transition, the observance of certain obligations and to meet other special circumstances, and also with such guarantees as are required by minorities to protect their political liberties and rights."

Your Lordship will notice that it says " Legislatures, Central and Provincial." When this declaration was made, it was felt that there was a way left open for Congress to negotiate with the Government. The Prime Minister himself had held out the invitation to Mahatma Gandhi and the Congressmen generally that they should come and take part in the Conference. When correspondence took place between Lord Irwin and Mahatma Gandhi, on the basis of which the agreement was arrived at which has brought Mahatma Gandhi here, Your Lordship will remember that one of the most important things in that pact was paragraph 2, which says:—

> " As regards constitutional questions, the scope of future discussion is stated, with the assent of His Majesty's Government, to be with the object of considering further the scheme for the constitutional government of India discussed at the Round Table Conference. Of the scheme there outlined Federation is an essential part; so also are Indian responsibility and reservations or safeguards in the interests of India on such matters as, for instance, Defence, External Affairs, the position of Minorities, the financial credit of India and the discharge of obligations."

It was on the basis of this agreement that the Congress agreed to be represented at this Conference and that Mahatma Gandhi came here; and, My Lord, every question that was referred to in this matter related to the establishment of a Central responsible government in India.

The Princes were invited to join the Federation. Your Lordship will remember they made it clear last year they would only federate with a self-governing India, and not with an India which was not self-governing. The establishment of responsibility in the Central Government was therefore a vital element in the agreement of the Princes to federate with British India.

Here, My Lord, all the discussions which have taken place have repeatedly reminded us that we were discussing the question of the establishment of responsibility at the Centre. When the Prime Minister the other day made a statement, and when you, Lord Chancellor, as Chairman of this Committee made your statement, it was felt that perhaps the matter was clear; but it unfortunately so happened that the Secretary of State, Sir Samuel Hoare, was absent on the day when the Prime Minister spoke here, and, when he came the following day, he made a statement which took many of us by surprise, because we thought that while the Prime Minister was the head of the Government what he said represented the mind of the Government. The statement made by Sir Samuel Hoare, to which reference has been made by my friend Mr. Rangaswami Iyengar,

came as a great shock to us, showing that there was a wide difference of opinion between the members of the Government on this vital question.

Sir Samuel Hoare : Perhaps I had better put that right at once. There has been no difference of opinion of any kind.

Pandit M. M. Malaviya : I am very glad to hear that from Sir Samuel Hoare, but Sir Samuel will recognise that I had some justification for the observations I have made because of what he said in this Committee and what the Prime Minister had said.

Sir Samuel Hoare : I am afraid I do not; I do not see any difference between them.

Pandit M. M. Malaviya : I am very glad if the difference has been obliterated from your mind during the time that has elapsed.

Now, Lord Chancellor, I have referred to these facts to show that India has been asking for the establishment of full responsible government in the country, and that no one in these extracts which I have given has made any reference to the establishment of mere Provincial autonomy. Why should the Princes have been invited to take part in this Conference if provincial autonomy only was to be considered? Why should the questions of the Army Defence, and Foreign Affairs have been brought into discussion before this Conference either last year or this year if provincial autonomy only was to be achieved in the first instance? Why should the question of safeguards and the question of currency and exchange have been debated both last year and this year if the establishment of responsibility at the Centre was not the main object before the Conference? It has come, therefore, My Lord, as a very great surprise to us that there should have been this talk indulged in about the establishment of provincial autonomy as the first step in the scheme of reforms. We have felt all along that the Government of India in India is the heart of the administrative machinery, and that unless the heart is put on a sound and healthy basis there can be no healthy existence in the Provinces. We have felt that we want a united India, an India which will be united though it is divided into States and Provinces; and for that India it is essential that the Princes should come into the Federation. But the Princes cannot come into the Federation, and that chapter has to be closed if it is decided to proceed only with autonomy in the Provinces. I submit, therefore, that this question should not have been raised, and that the method should have been adhered to of proceeding to discuss the vital questions that we have been discussing during the last few days, come to an agreement upon them, and report to the Plenary Conference, so that the result of the Conference may be communicated to His Majesty's Government.

Sir Samuel Hoare has said that the Government have not arrived at any irrevocable decision. He has said that the matter is still being considered. I am exceedingly glad to hear that. I hope that they will not commit the mistake of deciding to confine their efforts for the present to bringing about a Provincial Autonomy

Bill, because that would be regarded, I regret to say it, as a clear breach of faith on the part of the British Government with the people of India. It will do more damage than anything else I can think of in the relations of India and England. What is the alternative that you have before you? If it is decided that Provincial autonomy should be all that should be introduced at present, though there is held out a promise in the preamble or otherwise, that responsibility at the Centre will be established at an early date, the people will think that they have been defrauded, that they have not been treated fairly in discussing this question which is vitally affecting their position. The unrest that exists in India will multiply tenfold. The sense of depression that is going on in India will increase tenfold. You will have an India, restless, unhappy, torn by strife, not a matter of satisfaction either to you Englishmen or to the Indians. You will have an India where you will find the strife renewed that has in one sense been going on for the last ten years. Few men here who were not in India last year can realise the depth of feeling which prevails among the people. Those statesmen and public men who were in India a few years ago cannot draw a vivid and real picture of the state of things which exists to-day. Since the resolution for complete independence was passed at the Lahore Congress on the 21st December, 1929, the desire for freedom has become much more intense. The manhood of India has risen in a body to a new appreciation. There is an intense desire for the realisation of the freedom of the Motherland. The womanhood of India has been touched by the fire of patriotism. The women who used to be shut up in the Zenana came out in thousands during the last year of the war, not merely to attend meetings but to lead processions in the streets and to bear *lathi* charges which, unfortunately to the shame of the Government, were inflicted upon some of them. Even little children have been infected by the fire of patriotism. In all my life the most wonderful speech I ever heard was that delivered by a little lad ten years old. I was to visit Jhelum; I was to go there on a particular day. I was detained on the way by another meeting which people pressed me to attend. The boys got up a demonstration. They wanted to go and receive me at the railway station when the Congress left. Thirteen lads, some ten years of age, some younger, some older, went there. The station happened to lie, a portion of it, in the Cantonment area. They were told they could not. They used to go every day all the year round to the station by that same passage.

Lord Reading: Lord Chancellor, may I ask, on a point of order, is this in order? If we are to have instances of this kind discussed, are we to let them pass without a reply? And if we are to reply, what becomes of the Federal Structure Committee?

Sir Samuel Hoare: Hear, hear.

Pandit M. M. Malaviya: My Lord, I bow to the suggestion of Lord Reading, but my clear purpose is to indicate to you what is coming on if you fail to adhere to your promise.

Chairman: Yes, we quite appreciate that.

Pandit M. M. Malaviya: I want to say one word more. It is very painful to me. I only want to give Your Lordship and other members of the British Delegation an idea of what the alternative picture will be which you and I—we more than you—will have to face. I beg Your Lordships not to think it is a pleasure to me to refer to these matters.

Chairman: Well, I am quite sure you will exercise a wise discretion.

Pandit M. M. Malaviya: I will just complete this My Lord. This young lad and his twelve colleagues were hauled up and tried. When I reached that place, Jhelum, on the following day I went to the Court and found they were being tried. When we went back to address the meeting, these lads had been released. The Magistrate had had the good sense to release them. Then one of these lads got up on the table and made a short speech, the like of which I have not heard in my life. He said: "Before I started I told you boys that those of you who were not prepared to face charges and bear punishment should go back. You did not go back. Some of you fled away. It was a shame that you did so."

My Lord, I have mentioned this incident to show to you that the youth and children of India are thirsting for this freedom. You cannot satisfy that thirst without complying with the demand of the nation that there should be established national self-government in India. In all lands you have faced those who have fought for freedom. Will you make an exception in India, and will you condemn the Indian men and women if they are prepared to fight for freedom and win it? We have tried the effect of argument and reason. We have come here at your invitation, for which we are thankful, to discuss the matter and settle it by argument and reason and to tell you what is our view. If you turn this proposal down, if you adopt a course which will show to the people that the fears of those who told us, "They will not give it to you by argument and reason"—if you give an opportunity to those to say they were right and we were wrong, where shall we stand and what will be the fate of India?

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We should be able to arrive at conclusions which should be reported to His Majesty's Government. His Majesty's Government should incorporate the recommendations we make in the provisions of a Bill and there should be full responsible self-government in India, subject to those safeguards and reservations we have been discussing in this Committee. There has been more agreement than differences on vital questions such as the Army, External Relations, Financial Safeguards and Commercial Discrimination. On that I claim there has been a greater measure of agreement than of difference, and for that I must say we are very grateful for the

help Lord Reading has given, particularly in the matter of Financial Safeguards and Commercial Discrimination, and for the help of other European gentlemen. We have arrived at conclusions almost acceptable to all, and what differences are left can be settled and solved by such other friendly discussions as may be necessary. I do not see any reason why these vital questions should not be reported upon as a result of this Conference in a satisfactory manner. Sir Samuel Hoare said that there would be further deliberations and that consultations would continue. He said "this book is closed, and a new book is to be opened." I venture to ask who will look into the book if you fail to carry out your pledges to carry on the Conference. If I have spoken warmly I have done so because I feel that the interests of vast millions of my people are concerned. To-day you are discussing these matters in the cold atmosphere of England, but you do not know what the repercussions of your speeches may be in India. I am anxious that this Conference shall not break down, shall not end without completing its work, namely, arriving at conclusions on the large questions we are discussing. Now, Mr. Jinnah and Sir Muhammad Shafi have said that they do not want to stand in the way of such conclusions. On the contrary they have indicated that no constitution will be acceptable to them—or, let me say, to any one of us on this side—if it does not provide all reasonable protection to minorities. We are anxious to provide protection for minorities, but the larger question which has to be settled is between England and India, and I submit that every member of the British Delegation should make it clear to the British Parliament and to the public of England that here we are seeking a settlement by agreement. If you say that you cannot frame a Statute now I can understand that. The framing of a Statute will take time. But cannot you arrive at an agreement such as was arrived at in regard to Ireland with Michael Collins and the other delegates with him? They arrived at an agreement on the main points. Of course they arrived at agreement after a bloody war. We want to arrive at an agreement under happier conditions. Cannot you arrive at a similar agreement by which the main points will be settled and will form the basis of a Statute? If you once do that I venture to say that Mr. Gandhi will accept that as a practical proof of your intention to fulfil the pledges you have given. If that agreement is arrived at, then whatever time is necessary may be taken in drawing up a Statute. I do not agree with the view—with all deference to the lawyers—that three years will be needed to put the ideas we have arrived at into a Statute. Many of us have been members of legislative councils and have had some hand in law-making. I suggest that with the talent available in England—with the talent we have the good fortune of having at our disposal in our distinguished Chairman—it should not be difficult for our English friends, working in consultation with Sir Tej Bahadur Sapru and Mr. Jinnah and others, to frame a constitution within a reasonable period of time. If the people of India know that you have arrived at an agreement which

is to be taken as the basis in framing a constitution such as we desire, I venture to say that they will be satisfied. One thing more ought to be done. Let agreement be recorded. Let the fact be declared by the Prime Minister on behalf of the Government without anything being kept back from the people. Let there be a declaration by the Government that they are prepared to agree with the conclusions arrived at by this Conference. My Lord, the statute may take time to frame, but if we arrive at an agreement satisfactory to all business interests, an agreement satisfactory to all commercial companies, an agreement satisfactory to the trading interests, an agreement satisfactory to the Army people, a settlement which the Government are prepared to accept, there should be a new departure in India. The policy of Dominion Status should be adopted. The people should be taken into consultation. The leaders of public opinion should be taken into consultation and their services enlisted to prevent terrorism from carrying on its nefarious work. We should be allowed to co-operate with the Government to establish law and order, and to see that the business men whether Europeans or Indians, can carry on their business in happy circumstances.

On the other hand, if that is not done and if a different policy is to be followed, then I submit it will be a great wrong to India, and a great wrong to England also, because I believe—it is my firm conviction—that the British people do not want any injustice to be done to their fellow-subjects. I am sure they do understand that we Indians have just as much right to desire self-government and press for it and—if driven to it—fight for it as any other people. If that conviction is brought home to the British public, I am sure that a new chapter will open in the relations between India and England.

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Mr. Wedgwood Benn: Lord Chancellor, I will say in the first place that everybody who engages in this vital discussion must do so under a sense of very great responsibility; but, if it is our duty to speak with a sense of responsibility, it is also our duty to speak fearlessly and with complete courage.

I should like to say this in passing. Let me assure Mr. Gavin Jones of this, that so far as we are concerned, we are standing for peace and order in India. I myself have had serious responsibilities in regard to the maintenance of peace and order, and I regard this Conference, and even our contribution to it, as an attempt to maintain peace and order in India. This Conference stands as the enemy of all diehards, whether they are diehards on the left or diehards on the right; and I can assure Mr. Gavin Jones, who pleasantly interwove his personal views with the expression of the opinion of his delegation, that we stand here not only for the maintenance of order, but also for dealing radically with the matter in such a way as to make the maintenance of order permanently possible.

Now, Lord Chancellor, I regret extremely that so far as I can learn we are not to have any contribution whatever from the Government of a conclusive or decisive kind on this matter. We had a speech from the Secretary of State yesterday which contributed nothing whatever to the discussion, a speech saying that the Government intended to stand by its pledges and that no one had impugned its honour, but not in any way relevant to the subject raised, namely, whether or not it was the intention of the Government that simultaneous advance should be made both at the Centre and in the Provinces.

Now, Lord Chancellor, as far as this Committee is concerned I must draw attention once again to the speech of the Viceroy on the 9th July, 1930, inviting representative Indians to come to London and describing the terms of the discussions in which they were to be asked to engage. He said they were not to be academic discussions; he said they were to be deliberations, and he said that if agreement could be reached, on that agreement proposals would be formulated and laid before Parliament. Forgive me for saying this, My Lord Chancellor, but our experience during the last week has been the very reverse. We have found that in someway a sort of strangehold has appeared on the deliberations of this Committee at the very moment when we were approaching what were indeed the vital issues. Such expressions were used as that the Government would be glad to hear all expressions of opinion. The Pandit was assured that he would go back to India with the relief that he had expressed himself. Now that is not the purpose of this Committee. The purpose of this Committee is to deliberate, and when agreement is reached, to formulate proposals to lay before Parliament. That purpose is not expressed by me here for the first time. That purpose was expressed officially on behalf of the Government whose policy we are told is unchanged, by the Viceroy, Lord Irwin, on the 9th January, 1930. We now learn that it is not the intention of this Committee to make even a report on this very vital issue. I am not in the position and I should not attempt to challenge the validity of that ruling. It comes from the highest authority, but it certainly throws a new light on the character of our discussion.

Now so far as the matter of the discussion is concerned, what is it? It is this. There is a fear that what will really happen will be that we shall get the Statutory Commission's recommendations put into force as early as possible, and that the hopes by which this Conference is animated, namely, central responsibility, will be deferred to some undefined future. Those fears are based not only on the realities of the Parliamentary situation, but they are based upon some of the remarks which have fallen from the Secretary of State, and they are based particularly on the fact that in this vital discussion we have not had any indication whether or not the Government intend to dispel them. Let me remind you that, so far as this discussion is concerned, there has been, I should say almost for the first time in our discussions, complete unanimity. If you

look round this table from your left, round the table to your right, you will find that, except for the silent Government, everybody has expressed the opinion that there should be a simultaneous advance. The Muslim Delegation, whose patriotism has never for one moment been in doubt, has said, and we in these seats cordially agree with them, that it is impossible that this advance should take place until satisfactory guarantees are given to them and to the other minorities. With that statement we have always associated ourselves. But I would remind you that, if it is the intention of the Government to advance with Provincial autonomy first, it would be necessary that the communal settlement should be settled before such an advance can take place, and if that question therefore is settled, there is nothing to stand in the way of what I say—and it is beyond contradiction—is the unanimous desire of this Committee. I say the unanimous desire of this Committee is that the advance should be simultaneous.

Just one word and I have finished. The calling of this Conference has been a great task. Two years ago there was no spirit of co-operation in India. Many of the gentlemen gathered round this table were not co-operating with the British Parliament. They were unwilling to co-operate with the British Parliament. We passed through a time of great trouble and great sorrow to both peoples. We toiled and toiled in order to promote a spirit of co-operation. Here it is. Here you see a Conference the like of which has never been seen in the relations between Great Britain and India. The part played in that task by Lord Irwin will never be forgotten in the history of India. Is this co-operation to end by a silent Government which will note our remarks, but will not report on our remarks, and which will finally present us with a mere ukase, which will be the final scene of this Conference, giving some decision we know not what, but which may be in direct conflict with the desires of this Committee? The whole of the peace in India and the co-operation between the British and Indian peoples and all the rest is at stake at this moment, and I do beg you most earnestly that we may have some assurance from the Government that by a concession to what is the unanimous demand of this Committee, we may continue the way of peace and goodwill between the peoples of both countries. And I do beg of you most earnestly, Lord Chancellor, that we may have some assurance from the Government that, by a concession to what is the unanimous demand of this Committee, we may continue the way of peace and goodwill between the peoples of both countries.

Chairman: I only want to add one word to Mr. Benn's speech, and that is this. He has mentioned that Lord Irwin had a good deal to do with the calling of this Conference. I think that is quite true and I think the Conference has done a great deal of good. But I should like to be permitted to say also, that Mr. Benn had a great deal to do with summoning this Conference. I quite sympathise. I suppose a child cannot have two fathers, but I think this Confer-

ence has had two fathers: Lord Irwin and Mr. Benn. Mr. Benn is very anxious, of course, that the Conference should not fail, so am I. I am sure we all recognise very much the difficult position Mr. Benn is in, and I personally am very glad that we continue to have his assistance.

Now that finishes the debate upon this. I will report to the Cabinet. Now I think we can do this:

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Financial Safeguards (continued).

Sir Samuel Hoare: Lord Chancellor, I should like to begin with a word of apology to the Committee for breaking in with a short statement about Finance at this moment. I could not be here yesterday afternoon because I was in charge of a Bill in the House of Commons. The Government thought that before the Committee considers the Report upon financial safeguards, not only would it be courteous, but indeed it was necessary that I should make a short statement on their behalf, and it is with that intention that I venture to encroach upon your time and the rules of order at this moment.

Lord Chancellor, I have listened with great interest to a part of the debate upon Finance and I have read the speeches that were made when I was unfortunately called away to the House of Commons. Let me at once say that it has in my view been a useful discussion, and that upon the whole members of the Committee on all sides of the table have accepted very wisely the Lord Chancellor's word of friendly caution. The Committee has in my view been very prudent in following this course.

We have been discussing a subject that differs in many respects from the constitutional questions that have formed so large a part of our debates. What matters in finance—and here I speak as a member of a family that has for generations been connected with the City of London—is not agreement or disagreement among politicians but confidence in the great markets of the world. In any contemplated changes, therefore, the people that we have to convince are the bankers, and traders and investors. If we do not convince them neither Indian nor any other credit can remain stable. Rightly or wrongly these traders, bankers, investors are very cautious people. Particularly are they nervous of politicians and political changes. If we are to retain their support we must consequently carry them with us and though it may seem to be a slow process to many politicians it is essential that we should convince them if we are to retain the great advantages of cheap credit, easy money and a plentiful supply of the capital that India so greatly needs for its development.

When we talk of safeguards we are not gratuitously creating obstacles for the purpose of blocking Indian progress. We are genuinely trying in the interests of India herself to satisfy the con-

ditions that are in our honest view essential to Indian stability and Indian prosperity. It was on this account that last year when we were discussing this question Lord Peel and I, speaking for the Conservative Party, were nervous least the Committee's proposals should injure Indian credit. Since then the world has been facing a financial and economic blizzard. The credit of some nations and institutions has been shaken to the very foundations. The finance of every continent has been in a state of flux. I imagine most of the members of the Committee if they were asked in these abnormal times to give their candid opinion upon any of the financial questions that we are to-day discussing would, for those reasons, be on the side of caution. If I myself were asked at the present abnormal moment to define in full detail my conception of safeguards it might well be that I should have to demand more rigid machinery for ensuring them than I should need at a time when the world becomes more normal. Let me, therefore, support the warning given by Lord Reading that we should continue to avoid too great detail and let me confine myself to a general statement of the Government's attitude. The safeguards to be provided to secure the fulfilment of the obligations for which the British Government will remain responsible and to ensure the maintenance of the financial stability of India must be effective safeguards. Provided those objects are effectively secured we desire that any all-India Federation that may be established should enjoy the greatest possible measure of financial independence within its own sphere. One word as to the necessity of safeguards. So long as the Crown remains responsible for the defence of India the funds necessary for that purpose will have to be provided and the principal and interest on sterling debt issued in the name of the Secretary of State for India must be secured as must also the salaries and pensions of officers appointed under parliamentary authority, and as the provident and pension funds which have been fed by subscriptions from officers have never been funded but remain a floating obligation on the revenues of India responsibility for payments to retired officers and their dependents must remain with the Secretary of State until any new Government is in a position to provide sufficient capital to enable trust funds to be established. The annual charges under these various heads will amount in the aggregate to a considerable portion of Federal revenues, and for this reason it is necessary to include in the constitution provisions sufficient to ensure that those obligations are met. This means in effect that the safeguards to be provided must ensure the maintenance of financial stability and credit and this, in its turn, depends upon provisions in a new Budget to control the balance, that the sinking fund arrangements are adequate, that capital and revenue expenditure are allotted on sound lines, that excessive borrowing or borrowing for revenue purposes is not undertaken, and that a prudent monetary policy is consistently pursued. So far as the Budget is concerned, this by no means implies that the Governor-General would control its preparation in detail. Provided the

Budget is properly balanced, the Federal Government can have wide discretion to decide both upon the nature of the taxation to be imposed and upon the objects of expenditure, other than expenditure under the reserved heads.

It is, as I have noticed, held in some quarters that no safeguards should be embodied in the constitution unless it can be shown to demonstration that they are in Indian interests. Happily there is no conflict here between British and Indian interests, and I am confident that every member of this Committee, to whatever section he belongs, would agree that it is in the best interests of India that the financial stability and credit of the country should be maintained.

Now, you may say "Let us know what safeguards you propose to effect the objects you have in view; formulate them and describe them to us in detail." That, in ordinary conditions, is a reasonable request, but nevertheless I do suggest that at the present moment it would be undesirable to do this. I am not sheltering myself behind the fact that certain sections of the Committee are unwilling to participate in these discussions until other matters of a political character have been settled. Nothing of the kind; my reasons are entirely different, and they are these. To-day, as I have just said, the world is passing through this financial and economic crisis. Trade is depressed. Most national budgets are unbalanced and the currency systems are disorganised. From these evils India has not escaped, and, as you all know, His Majesty's Government have given certain undertakings that, if the need arises, they will seek Parliamentary authority to come to her assistance.

That being the position, if we were required here and now to formulate the safeguards which would effectively secure the maintenance of the financial stability and credit of India, it is evident that these safeguards would have to be of a very rigid character. Apart from this, the structure of the new constitution is still under discussion, and it is evident that the precise nature of the safeguards to be provided must fit in to the constitutional structure as finally determined.

It, therefore, seems to me that nothing would be lost and everything gained if we postponed for the present a discussion of details.

The Reserve Bank has bulked largely, and rightly so, in our discussions, and I should like to say one word about this. We are all, I think, agreed that a Reserve Bank should be established with as little delay as possible, a bank secure with adequate resources, free from political influence and independent of government. I need hardly say that if such a bank could be established, the formulation of financial safeguards would be greatly simplified, but, even if the gold and sterling assets necessary were available—and we are a long way removed from this—would any reasonable person advocate the establishment of a Reserve Bank at a time like the present, when monetary conditions all over the world are disorgan-

ised and when no one can predict what currency system in harmony with world conditions will be found to be best adapted to Indian interests.

Let me, in conclusion, briefly summarise the position. Our objective is unchanged. The first essential for the security of India's position as a nation and for the prosperity of her people is the maintenance of confidence in her financial stability and credit. Accordingly, safeguards recognised as effective must be settled which will ensure that the finances of India are properly administered and that the obligations for which the British Government will remain responsible are met. Subject to such safeguards, we desire to give to the new Federal Government, when it is established, the greatest possible measure of financial responsibility within its own sphere, but, for the reasons that I have given, and which I hope generally will commend themselves to the Committee, we do not think that the time has come when it is desirable to formulate the precise machinery by which to give effect to the safeguards to which I have alluded. I have no doubt in my own mind that the policy that I have outlined is in the best interests of India. Looking at the matter purely from the Indian standpoint, can it be doubted that the highest interests of the country will best be served by making such provisions as will ensure that, whilst a new constitution is developing, confidence both in India itself and in the outside world is assured.

Chairman: We are very much obliged to Sir Samuel Hoare. Now we have twenty-five minutes left, and I do not think I need trouble you much on the Report on Commercial Discrimination.

Consideration of the draft Fourth Report on Commercial Discrimination.

Chairman: Will you please take the draft Report in your hands. I do not think it will take very long, because what I have done is that I have asked various members to let me have their views and I have incorporated them. I will just read it through in the way we usually do and then come back to each paragraph. It is the fourth Report of the Federal Structure Committee, on Commercial Discrimination.

(*The Chairman here read the paragraphs of the draft Fourth Report dealing with Commercial Discrimination.*)*

1. On this subject the Committee are glad to be able to record a substantial measure of agreement. They recall that in paragraph 22 of their Report at the last Conference it was stated that there was general agreement that in matters of trade and commerce the principle of equality of treatment ought to be established, and that the Committee of the whole

* These paragraphs, as amended in consequence of the ensuing discussion, are printed as paragraphs 16—26 of the Fourth Report of the Federal Structure Committee, *see* pages 488 to 491.

Conference at their meeting on January 19th, 1931, adopted the following paragraph as part of the Report of the Report of the Minorities sub-Committee:—

"At the instance of the British commercial community the principle was generally agreed that there should be no discrimination between the rights of the British mercantile community, firms and companies trading in India, and the rights of Indian born subjects, and that an appropriate Convention based on reciprocity should be entered into for the purpose of regulating these rights."

More than one member in the course of the discussion also reminded the Committee that the All-Parties Conference in 1928 stated in their Report that "it is inconceivable that there can be any discriminating legislation against any community doing business lawfully in India."

2. The Committee accept and re-affirm the principle that equal rights and equal opportunities should be afforded to those lawfully engaged in commerce and industry within the territory of the Federation, and such differences as have manifested themselves are mainly (though not entirely) concerned with the limits within which the principle should operate and the best method of giving effect to it.

3. The Committee are of opinion that no subject of the Crown who may be ordinarily resident or carrying on trade or business in British India, should be subjected to any disability or discrimination, legislative or administrative, by reason of his race, descent, religion, or place of birth, in respect of taxation, the holding of property, the carrying on of any profession, trade or business, or in respect of residence or travel. The expression "subject" must here be understood as including firms, companies and corporations registered or carrying on business within the areas of the Federation, as well as private individuals. The Committee are also of opinion that *mutatis mutandis* the principle should be made applicable in respect of the same matters so far as they fall within the federal sphere, in the case of Indian States which become members of the Federation and the subjects of those States.

4. It will be observed that the suggestion contained in the preceding paragraph is not restricted to matters of commercial discrimination only, nor to the European community as such. It appears to the Committee that the question of commercial discrimination is only one aspect, though a most important one, of a much wider question, which affects the interests of all communities alike, if due effect is to be given to the principle of equal rights and opportunities for all.

5. More than one member of the Committee expressed anxiety lest a provision in the Constitution on the above lines

should hamper the freedom of action of the future Indian Legislature in promoting what it might regard as the legitimate economic interests of India. The Committee do not think that these fears are well-founded. Key industries can be protected and unfair competition penalised without the use of discriminatory measures. The Committee are, however, of opinion that it should be made clear that where the Legislature has determined upon some system of bounties or subsidies for the purpose of encouraging local industries, the right to attach reasonable conditions to any such grant from public funds is fully recognised, as it was recognised in 1925 by the External Capital Committee, and is recognised to-day by the practice of the Government of India itself.

6. It should, however, also be made clear that bounties or subsidies, if offered, would be available to all who were willing to comply with the conditions prescribed. The principle should be a fair field and no favour. Thus a good deal was said in the course of the discussion of the need for enabling Indian concerns to compete more effectively with larger and longer-established businesses, usually under British management and financed with British capital. Where the larger business makes use of unfair methods of competition, the general law should be sufficient to deal with it; but many members of the Committee were impressed with the danger of admitting a claim to legislate, not for the purpose of regulating unfair competition generally but of destroying in a particular case the competitive power of a large industry in order to promote the interests of a smaller one.

7. With regard to method, it appears to the Committee that the constitution should contain a clause prohibiting legislative or administrative discrimination in the matters set out above and defining those persons and bodies to whom the clause is to apply. A completely satisfactory clause would no doubt be difficult to frame and the Committee have not attempted the task themselves. They content themselves with saying that (despite the contrary view expressed by the Statutory Commission in paragraph 156 of their Report) they see no reason to doubt that an experienced Parliamentary draftsman would be able to devise an adequate and workable formula, which it would not be beyond the competence of a Court of Law to interpret and make effective. With regard to the persons and bodies to whom the clause will apply, it was suggested by some that the constitution should define those persons who are to be regarded as " citizens " of the Federation, and that the clause should apply to the " citizens " as so defined; this indeed was a suggestion which had been made by the All-Parties Conference. There are, however, disadvantages in attempting to define the ambit of economic rights in terms of a political definition, and a

definition which included a corporation or limited company in the expression " citizen " would be in any event highly artificial. The Committee are of opinion therefore that the clause should itself describe those persons and bodies to whom it is to be applicable on the lines of paragraph 3 and that the question should not be complicated by definitions of citizenship.

8. If the above proposals are adopted, discriminatory legislation would be a matter for review by the Federal Court. To some extent this would also be true of administrative discrimination; but the real safeguard against the latter must be looked for rather in the good faith and common sense of the different branches of the executive government, reinforced where necessary by the special powers vested in the Governor-General and the Provincial Governors. It is also plain that where the Governor-General or a Provincial Governor is satisfied that proposed legislation, though possibly not on the face of it discriminatory, nevertheless will be discriminatory in fact, he will be called upon, in virtue of his special obligations in relation to minorities, to consider whether it is not his duty to refuse his assent to the Bill or to reserve it for the signification of His Majesty's pleasure.

9. The question of persons and bodies in the United Kingdom trading with India, but neither resident nor possessing establishments there, requires rather different treatment. Such persons and bodies clearly do not stand on the same footing as those with whom this Report has hitherto been dealing. Nevertheless, the Committee were generally of opinion that, subject to certain reservations, they ought to be freely accorded upon a basis of reciprocity the right to enter and trade with India. It will be for the future Indian Legislature to decide whether and to what extent such rights should be accorded to others than individuals ordinarily resident in the United Kingdom or companies registered there, subject of course to similar rights being accorded to residents in India and to Indian companies. It is scarcely necessary to say that nothing in this paragraph is intended to limit in any way the power to impose duties upon imports into India, or otherwise to regulate its foreign trade.

10. It had been suggested at the last Conference, and the suggestion was made again in the course of the discussion in the Committee, that the above matters might be conveniently dealt with by means of a Convention to be made between the two countries, setting out in greater detail than it was thought would be possible in a clause in an Act the various topics on which agreement can be secured. The idea is an attractive one, but appears to present certain practical difficulties. The Committtee understand that the intention of those who suggested it is that the Convention, if made,

should be scheduled to and become part of the Constitution Act. It was, however, pointed out that such a detailed Convention would be more appropriately made between the United Kingdom and the future Indian Government when the latter was constituted, and that in any event it seemed scarcely appropriate in a Constitution Act. On the other hand, the Committee are of opinion that an appropriately drafted clause might be included in the Constitution itself, recognising the rights of persons and bodies in the United Kingdom to enter and trade with India on terms no less favourable than those on which persons and bodies in India enter and trade with the United Kingdom.

11. In conclusion, there was general agreement to the proposal that property rights should be guaranteed in the Constitution, and that provision should be made whereby no person can be deprived of his property, save by due process of law and for public purposes, and then only on payment of fair and just compensation to be assessed by a Judicial Tribunal. Such a provision appears to the Committee to be a necessary complement of the earlier part of this Report. A formula of this kind finds a place in many constitutions and the form used in the Polish Constitution seemed to the Committee to be specially worthy of consideration.

Chairman: Are there any comments on paragraph 1?

Then we will pass to paragraph 2.

Mr. Gandhi: I should like this added, Lord Chancellor, at the end of that paragraph:—

> "Some, however, contend that the future Government should not be burdened with any restraint, save that no discrimination should be made merely on the ground of race, colour or creed."

Chairman: I will certainly put that in. Where do you want that to go?

Mr. Gandhi: At the end of the second paragraph.

Chairman: Now we come to paragraph 3, please.

Sir Phiroze Sethna: May I suggest the addition here of the word "only"? I suggest we should say, "by reason *only* of his race."

Chairman: You want the word "only" put in?

Sir Phiroze Sethna: I suggest that.

Lord Reading: That implies you can do it for other reasons. Why do you want "only" in?

Sir Tej Bahadur Sapru: It would weaken it.

Chairman: Yes, it weakens it.

Sir Samuel Hoare: I think you had better keep it as it is. I know what you want, but I think it would weaken it if you put that in.

Chairman: Now we will take paragraph 4, please.

Sir Akbar Hydari: With regard to the last sentence, we should like what His Highness the Nawab of Bhopal said put in here.

Chairman: I will ask Mr. Carter to make a note to that effect. That ought to have been in.

H.H. The Nawab of Bhopal: You have a note of what I said.

Sir Akbar Hydari: The wording may be what His Highness said.

Chairman: Yes, I have it.

We will now turn over the page to paragraph 5. I believe you have something on this, Pandit Malaviya?

Pandit M. M. Malaviya: Yes. I think it is necessary to be careful here not to go too far. A Swiss or American, or any other Company might come and establish itself in Bombay, or in some other place, and the advantages which the National Government may be prepared to give to a national institution or indigenous institution, it may not be willing to give to an institution which does not come under that description, and we should not encourage the idea, as is done in paragraph 6, that these bounties or subsidies would be available for " all who were willing to comply." The Company might comply with certain conditions, but it might still be unfair to the indigenous industries to grant it assistance.

Chairman: I follow your point, and I think we must put your caveat in there.

Pandit M. M. Malaviya: It is not a matter of a caveat; if we agree to it, it can be submitted by the Committee.

Sir Samuel Hoare: I am not sure about Pandit Malaviya's point. Do you wish to exclude all foreign companies, or foreign companies as distinct from British companies, or what is your suggestion?

Pandit M. M. Malaviya: British companies would come under the provisions already laid down. It should be made clear that even British companies which are willing to comply with the rules laid down should not expect to get the advantage of any protective action which may be taken by the Indian Government. They are entitled to ask that there should be no discrimination against them, but they are not entitled to ask that, because they are British, they should have advantages which we may want to give to indigenous concerns.

Chairman: I thought the next sentence sounded very well. It came from Mr. Gandhi, and that is why I put it in—" The principle should be a fair field and no favour."

Mr. Iyengar: Suppose we decided or desired to give a subsidy to Indian steel as against Belgian steel which is dumped. Would it be right for the Belgian Company to put up plant and machinery in India and apply for the same subsidy?

Lord Reading: Does that mean you want it to apply to Indian steel and not to British companies?

Mr. Iyengar: That is the point, My Lord. You will remember that when we had the Steel Protection Act we did discuss the matter, and the Legislative Assembly was particularly careful not to make it a condition that British steel, as such, was given a preference. We specified a certain class of steel, to which we gave free access into our country and against which we refused to give a subsidy. I am not referring to the question of giving preference to British steamers, that is a different question. What I am now referring to is the point that the purpose of the subsidy might be defeated if we were to say the subsidy is available for the foreign companies against whom the subsidy is sought to be granted.

Lord Reading: What I am trying to ascertain is this: Is your point foreign companies as distinguished from Indian and British companies?

Mr. Iyengar: On the question of British companies, My Lord, there are previous paragraphs which deal with the question of discrimination and reciprocity.

Lord Reading: But it still leaves that question open. I only want to know what you mean. Do you mean by that that there may be discrimination in this sense that you may give assistance to an Indian company which will not be available to a British company?

Pandit M. M. Malaviya: I do mean it, My Lord.

Lord Reading: I thought you did.

Sir Samuel Hoare: I am entirely against that myself; I think that is quite unfair.

Pandit M. M. Malaviya: But my point is that there is a distinction to be made between giving discrimination to a British company and giving advantages to a British company which we want to give to Indian companies. Of course, that would not apply to Europeans who are settled in India or carry on business there.

Chairman: I will make a note of your point, Pandit Malaviya; but as at present advised I am afraid I cannot alter that. I should like to discuss the matter again with you. I quite see your point. You say discrimination is not the same thing as givng a bounty. Well, I quite follow what you mean; but I do not want to have repercussions of this thing which may get us into difficulties either here or abroad at present. I will record your opinion. If you and Mr. Iyengar will be kind enough to draw up a short sentence, I can put it at the end of this; so that we will put it in. This is one of those things in which I think we should be rather foolish, having regard to the difficulties of putting tariffs on against people or not giving them bounties, and getting into difficulties with other people, if we are not very careful. What I mean to say is this, it is not the sort of decision we can take at the eleventh hour and the fifty-ninth minute. Let us put your caveat in, let it remain there. It

is one of those things which will have to be discussed again later. I am not against you; I mean I am not against your putting that in; I will certainly have it put in; but as far as I am concerned, I must stick to that paragraph.

Pandit M. M. Malaviya: I want to put another point before Your Lordship in regard to what Lord Reading said. Take an ordinary case of a Japanese Company; supposing a Japanese Company goes and settles down in Bombay, starts some business and claims the same advantages that we give to an Indian. I do not think you would like a Japanese Company to be able to claim it of us. Take a Danish Company, a French Company, or an American Company; you would certainly not wish those Companies to be entitled to claim the same advantages that would be granted by a National Government to an Indian Company.

Sir Samuel Hoare: Yes, but then what we are interested in is the British Companies. Would you be prepared to say it would be available to all British Companies?

Mr. Iyengar: My Lord, I would take it in this way——

Sir Samuel Hoare: May I just have an answer to that question?

Pandit M. M. Malaviya: May I ask you, Sir Samuel Hoare, and Lord Reading, to help us by saying whether that would be a proper thing to ask for a British Company which is trading in India.

Sir Samuel Hoare: My answer would be " Yes."

Pandit M. M. Malaviya: That is to say you ask that the protective assistance or bounty or subsidy or other advantage should be given to a British Company which is trading in India merely because it is being given to a national indigenous industry. Such advantages are given to an indigenous industry because they are wanted on principles which are recognised, but to share that advantage with well-established British Companies I do not understand, though I am open to conviction. I should like their help to understand.

Lord Reading: I do not want to repeat the argument I have put, but I think what you are saying does bring in the danger that I pointed out when we were discussing it; and you see it does not help us very much to say you would not like this to be done with regard to a Japanese or a Belgian Company. It does not touch the point. The point is that you want to get it in general language, so far as I understand. If I am wrong so much the better. It would make it applicable also to a British Company. You said quite frankly that you did; that is what I pointed out before when I was speaking, that I thought it was most objectionable and I should object to it most strongly. I think if that were done you would destroy everything we are doing at the present moment. I thought the principle was that no distinction would be drawn between a British Company and an Indian Company. Of course,

I mean a British Company which is carrying on its business there. We had already reached that.

Sir Purshotamdas Thakurdas: May I ask one question, Lord Reading? Does the last sentence or the previous paragraph apply to this; that is " the right to attach reasonable conditions to any such grant from public funds."

Lord Reading: That is the External Capital point, is not it; funds, registration of a Company there, a certain moderate proportion of Directors, and so forth?

Sir Purshotamdas Thakurdas: Yes, whatever those may be.

Lord Reading: Yes, I expressly said I did not raise any point with regard to that. I agree.

Sir Purshotamdas Thakurdas: Then it would not be a bar under this enunciation of the principle of " a fair field and no favour," if the Legislature, when they sanction a bounty or a subsidy, have the power to lay down certain provisions which will qualify for it. They can be such conditions as would suit a certain industry. I only wanted to know whether that last sentence did apply to these and was included in this principle or not.

Mr. Sastri: May I ask a question?

Chairman: Yes.

Mr. Sastri: Is my recollection right that round this table last year as we were discussing this subject, the spokesman of the British Mercantile Community in India admitted that it was perfectly legitimate for the Indian Legislature, where it sanctioned bounties in order to create a certain indigenous industry, to confine it to the industries managed and owned by nationals of India as distinct from non-nationals of India. Am I right in my recollection?

Chairman: I did not so recollect that.

Pandit M. M. Malaviya: Mr. Benthall said it this year also.

Mr. Benthall: I do not recollect it, but I made our position quite clear that we accepted the Report of the External Capital Committee, with one small exception, which was a matter of wording and not of sense.

Lord Reading: My recollection is that it never went further than that; it was accepted in that sense, and just in the same way that I think Mr. Benthall spoke and I spoke with regard to it; that is to say that you may have conditons of a rupee company registered in India with a certain proportion of directors. There was a little more controversy about shareholders, for reasons I will not go into now; but otherwise that was agreed.

Mr. Sastri: Was it not based on a distinction between nationals and non-nationals?

Lord Reading: May I point out, Mr. Sastri, that that strikes fundamentally at the root of non-discrimination if you do that generally. You cannot possibly do that and maintain the principle of

no discrimination; because if you were right, you see, it would be possible then to do the very thing which you remember I suggested was the dangerous point; that is to subsidise an indigenous industry with the idea that it would compete successfully with a British industry, that is a British-owned industry which had been carrying on its business there for a number of years and made its reputation there. That was the very point.

Mr. Sastri: But, Lord Reading, I think this opens a very wide door. When the Legislature grants a subsidy to an industry it as a matter of fact takes the subsidy out of the general funds raised by taxation upon the people. It would only be justified in doing so if there was an expectation that as a consequence a purely indigenous industry would benefit. If it was an industry which might be considered non-national there would be no justification for taxing the people of the country.

Lord Reading: May I point out that in this country we have some organisations of that character where we pay subsidies. We do not make any distinction in the case of business which is carried on by persons who are outside this country. What we insist on is that the company or firm shall carry on its business in this country. By that we get a certain amount of employment and taxes are derived from it. That is how it is done. I do not know of any case where there is a distinction drawn between a company whose shareholders reside in this country and a foreign firm who may establish a business here.

Mr. Jayakar: We are seeking to have subsidies paid only to industries which may grow up in the country.

Lord Reading: So are we.

Mr. Benthall: May I point out to Mr. Sastri that my community are very large taxpayers in India, and will have to bear their full share of the burden?

Mr. Jayakar: In my opening speech I tried to make out a case for a class of industries which I called infant industries; that is, industries which are just struggling into existence and to which the Government might think it necessary to give some protective bounties. Why should it be wrong for the future Government of India to protect an infant Indian industry? I am not speaking of industries which are able to stand on their own legs, but of industries which have just come into existence. Why should not the future Government of India have the power to give some protection to such industries without giving the same to other industries, not on the ground that they are British, but on the ground that they are able to sustain themselves?

Mr. Sastri: Mr. Benthall has raised the point that the European community in India are taxpayers, and, therefore, come under the class which I intend to benefit. He is quite right; I do not deny that for one moment, but I wish the benefit of this to be extended to all who reside in India and become nationals of that country.

Mr. Benthall is speaking for those who reside in India and pay the ordinary taxes. If that is his object I have no objection, but the thing would apparently extend to all who, not residing in India and not forming a part of the population of India, would merely export their capital into India and benefit by this. I am thinking only of that.

Lord Reading: They would have to set up the industry in India in order to get the benefit of this, would not they? It could not be done simply by sending goods, or anything of that kind.

Pandit M. M. Malaviya: The match industry has already been set up in Bombay.

Lord Reading: I was dealing with Mr. Sastri's point. It is very much what happens here and is being discussed at this moment. For example, you may put protective duties on for a particular purpose, to protect a national industry, and the effect of it sometimes is that foreign countries come and set up their works here. We never interfere with that if they chose to do it, and come and take part in the national organisation and give employment and carry on their business here.

Mr. Sastri: I am thinking of bounties and special subsidies which are paid to struggling industries, and which certainly come out of the general taxes of the country. I am not thinking of the ordinary protective duties which England seems now to be adopting; I am thinking of another extension of this subsidising of industries.

Lord Reading: We do that also. There is the case of sugar-beet, and we do not raise any distinction about the companies.

Chairman: A fair field and no favour!

Pandit M. M. Malaviya: You do not produce much sugar yourselves.

Lord Reading: Oh, yes.

Sir Akbar Hydari: Perhaps I may say what our own practice has been in Hyderabad. It is that wherever we want to give any help from public funds we do lay down certain conditions, which are not based upon racial discrimination, but upon these facts—that a certain proportion of the directors shall be Hyderabadis and also a certain number of the shareholders. Having regard to the difficulties to which Lord Reading has referred, we say that a first refusal of a certain number of shares shall be given either to Hyderabadis or to the Hyderabad Government, but afterwards there are no further conditions.

Lord Reading: I do not oppose that for a moment.

Chairman: I agree with every word you have said.

Sir Tej Bahadur Sapru: The words here are "It should, however, also be made clear that bounties or subsidies, if offered." Does not that imply that it is entirely discretionary with the Government to offer or not to offer?

Lord Reading: It is, obviously.

Sir Tej Bahadur Sapru: The words are "if offered."

Pandit M. M. Malaviya: That is to say, if they offer to any industry; that is their option; but if they once offer to one industry, the question is, should it be made available to every member of that industry?

Chairman: That is too subtle for me; it beats me all the time.

Lord Reading: The Government must offer; it cannot help it.

Chairman: Very well; I think we understand the point.

Sir Purshotamdas Thakurdas: Do you mind changing the words in the third line? It says here "all who were willing to comply with the conditions prescribed," and I suggest we should say "all who were willing to comply with such conditions as may from time to time be prescribed by the Legislature." That is implied by the reply which I got to my last question. Otherwise this might seem to apply to the last three lines of paragraph 5, where reference is made to the External Capital Committee.

Mr. Benthall: You might say "in accordance with the paragraph above."

Sir Purshotamdas Thakurdas: The point is that the conditions should be such as may from time to time be prescribed by the Legislature.

Mr. Benthall: In accordance with the recommendations of the External Capital Committee.

Sir Purshotamdas Thakurdas: No. The reference to them is merely illustrative and not exclusive; that is what I want to make clear. Surely you do not want to restrict this to those conditions only? It should be open to the Legislature to lay down the conditions from time to time in accordance with what circumstances demand, provided they are not of a racial character, but you cannot tie the whole constitution down for ever to those recommendations only.

Lord Reading: But they are not tied down.

Sir Purshotamdas Thakurdas: I was replying to Mr. Benthall.

Lord Reading: The words simply are that they shall comply with the conditions prescribed in the Government's offer.

Sir Purshotamdas Thakurdas: There may be a misunderstanding; it may be thought that the "conditions" are the conditions laid down by the External Capital Committee in 1925. The Legislature, however, should have the right to vary these conditions from time to time.

Mr. Jayakar: Could not we say "would be available to all who were willing to comply with such conditions as may be prescribed?"

Sir Purshotamdas Thakurdas: No, "with such conditions as may be from time to time prescribed by the Legislature."

Lord Reading: I do not think we could have that. The Legislature might specify—we must assume it for the purpose of discussion—that there must be, say, one hundred per cent. directorate, one hundred per cent. of the shareholding Indian, and so forth. You could not possibly have that.

Sir Purshotamdas Thakurdas: It would be racial discrimination to say one hundred per cent. What I am trying to make out is whether it is the intention in drafting this to tie the whole thing down to the details laid down by the External Capital Committee. (*Cries of "No."*) Then, if it is not, the Legislature should be completely free to vary them in accordance with the circumstances.

Mr. Jayakar: It may not be the Legislature; it may be the Department which will lay down the conditions.

Sir Purshotamdas Thakurdas: With bounties and subsidies I think it must be the Legislature.

Pandit M. M. Malaviya: It must be.

Sir Purshotamdas Thakurdas: I do not think it could be done by Departmental order. The Legislature must vote the money.

Mr. Iyengar: In the nature of things the Legislature should from time to time impose the conditions, because a subsidy should operate on a sliding scale on varying conditions so as to make it effective and so that it shall not be a burden on the taxpayer, and therefore the Legislature cannot be tied down to any definite conditions on which alone subsidies could be allowed.

Mr. Benthall: The External Capital Committee went into this matter at great length, and came to the conclusion that when bounties were given in this way a very limited amount of discrimination would be reasonable. They defined what they thought was reasonable, and we accepted it in my first speech.

Sir Purshotamdas Thakurdas: If it is clear, then I agree; but, unless it is clear, I am afraid I cannot possibly agree to this. You cannot tie this down to the terms suggested in 1925.

Mr. Jayakar: Your fear is that the words "conditions prescribed" may be taken to be the conditions prescribed in 1925, but if we were to say "such conditions as may be prescribed" that should solve the problem.

Sir Purshotamdas Thakurdas: But by whom? Presumably it will be by the Legislature. The money for the bounties and subsidies will be voted by the Legislature.

Chairman: I suppose, Sir Purshotamdas, they would go to the Federal Court if there was any dispute about it?

Sir Purshotamdas Thakurdas: That comes later.

Chairman: I know, I was only asking you.

Sir Purshotamdas Thakurdas: What is it, My Lord?

Chairman: It does not matter, thank you.

Sir Samuel Hoare: I think it is all right as it is, My Lord.

Pandit M. M. Malaviya: "Will be available to all who are willing to comply with such conditions as from time to time may be prescribed by the Legislature."

Sir Purshotamdas Thakurdas: Yes.

Lord Reading: No, I would never agree to that. I think that is introducing the very principle of discrimination which we want to prevent. It is giving the power to do it; I am not saying it is doing it, because the Legislature may never do it; but it is giving the power to do it. That is what I am trying to prevent.

Sir Purshotamdas Thakurdas: Your Lordship's intention is that it should be restricted by those conditions which were laid down by the External Capital Committee of 1925, which cannot be altered?

Lord Reading: No.

Sir Purshotamdas Thakurdas: May I understand what is meant by those words as put down by the draftsman?

Lord Reading: If you ask me, I should say the conditions prescribed by the offer of the bounties or subsidies, subject to this, that there should be no discrimination, except in so far as you might possibly imply it by the conditions of the External Capital Committee, which are obviously permitted.

Sir Purshotamdas Thakurdas: Are those the only conditions which Your Lordship is prepared to accept?

Lord Reading: No, I have said not. You may lay down certain conditions, as is done in this country. You may lay down conditions intended to cover those conditions which may be apprehended, and which may be other than those merely of the External Capital Committee; but those conditions could not be of a discriminatory character.

Mr. Benthall: Such as that the industry had to start at such and such a time in order to earn the bounty.

Sir Purshotamdas Thakurdas: We have agreed that they should not be conditions of a purely racial character. Once they have restricted it to that I do not think we would be prepared to accept any other restriction, My Lord. That is the whole point.

Mr. Iyengar: The whole point of Sir Purshotamdas' difficulty is what "the conditions" denotes—the conditions referred to here or the conditions referred to in the previous paragraph in the recommendations of the External Capital Committee. In the nature of things, as Lord Reading has pointed out, whenever a subsidy is offered by the Government through the Act of the Legislature, conditions will be prescribed there, and it is those conditions which are referred to.

Lord Reading: Yes.

Mr. Iyengar: So I strongly support Mr. Jayakar's suggestion to make clear such conditions as may be prescribed.

Lord Reading: I do not raise any objection to that; that is only a paraphrase.

Chairman: Yes—" such conditions as may be prescribed."

Lord Reading: Certainly, I do not raise any objection to that.

Chairman: Now paragraph 7 please.

Mr. Gandhi: It says: " With regard to method, it appears to the Committee." Will you add this; I have simply said: " save for the exception taken in paragraph 2."

Chairman: Certainly, Mahatma:—" save for the reservation in paragraph 2." I am much obliged to you. I ought to have done that. Now paragraph 7.

Sir P. Thakurdas: May I just enquire about line 8 in paragraph 6? There you use the words " usually under British management and financed with British capital." What are the implications of that?

Chairman: We must not tie ourselves down too much by definition. We are putting it rather vaguely.

Lord Reading: Surely that is only a recital; it is not an operative part.

Mr. Iyengar: It is a mere description.

Sir P. Thakurdas: All right, Sir.

Chairman: Now paragraph 7.

Sir P. Thakurdas: In paragraph 7, I see in the third line:—

> " the constitution should contain a clause prohibiting legislative or administrative discrimination."

I wonder how it would be feasible to come to any decision about this? Later on I see the draft Report suggests that these matters might be referred to a Court of Law.

Lord Reading: I remember myself very distinctly that the words " Legislative or administrative discrimination " were used and as I understood the discussion it was accepted that no distinction could be drawn between legislative or administrative acts. Otherwise it might be within the power of the administration to make discrimination of all kinds.

Sir Purshotamdas Thakurdas: I know that I raised the question because I did not hear it in the course of the discussion this time. I want to know: if seven tenders were made and British and Indian firms tendered on equal terms, but an Indian tender was accepted, which was Rs. 5 higher than the British tender, would that be considered a just cause for a Court suit? Is there any precedent for anything like this in any constitution? It is most unusual, I submit, and I very emphatically differ.

Chairman: Very well, thank you very much. You differ. We will put down that one Member disagrees.

Mr. Joshi: I also disagree.

Chairman: Very well, we will say two Members disagree. Are there any comments on paragraphs 8, 9 and 10? If not, we will take paragraph 11.

Mr. Joshi: On paragraph 11, I should like to say that I think in certain circumstances it would be within the power of the Government or local bodies to take without compensation private property as a penalty for certain criminal offences or for public purposes. I should like to know what is contemplated.

Chairman: What is it you want? Is it the old law of attainder?

Sir Tej Bahadur Sapru: I would not agree to that.

Chairman: What do you suggest? Is it that if anybody, say, commits murder his property should be confiscated?

Mr. Joshi: In certain cases property is being confiscated to-day.

Chairman: For what?

Mr. Gandhi: Sedition. I can give you the instance.

Mr. Joshi: Yes, for sedition.

Lord Reading: Is it without compensation?

Sir Tej Bahadur Sapru: May I deal with this? I think the case that is being referred to is that of Mahendra Pratap Singh, Raja of Hathras. I know that case very well, because I had to deal with the matter in my professional capacity. It was found that he had joined the enemy during the war and therefore he was declared to be an enemy and his property was confiscated but it was regranted to his son.

Chairman: What do you want put in?

Lord Reading: Would it not do if you put in "Save under process of existing law."

Mr. Joshi: But the law may be changed later on.

Chairman: You cannot help the people of India changing their laws. You cannot have them like the laws of the Medes and Persians.

Mr. Joshi: There is a second point. It might be necessary to take property for public purposes. The owners of the property may have done nothing on account of road improvements made by the municipality or the government. There is no reason why property should not be taken in such a case without compensation. As a matter of fact in certain conditions it may be in the interests of the property-owners themselves that their property shall be taken without compensation.

Under certain conditions private roads are compulsorily taken over by municipalities without compensation, in the interests of the town itself. Certain owners of private roads, it may be, refuse to improve those roads and refuse to provide lighting, and therefore the municipality has to take them over without compensation. Under these conditions we must provide for certain occasions on

which property may be taken by statutory bodies without compensation.

Chairman: What I feel about this, Mr. Joshi, is that I should very much like to leave something for you to do when you are a member of the Federal Government of India. You can then propose an amendment to this effect.

Mr. Joshi: But if you make this a fundamental right, every law that is proposed will be declared to be void.

Chairman: We cannot have that, no.

Sir Akbar Hydari: I have been asked to make it clear that so far as this fundamental right is concerned, that no one should be deprived of his property save by judicial tribunal, that this may interfere to a certain extent with the rights of Indian States.

Chairman: You are quite right. I will see that something is put in.

Mr. Benthall: I should like to pay a tribute to the great courtesy which we have received throughout our negotiations with my Indian colleagues, and to the many constructive suggestions which they have made.

Chairman: I am sure we all agree with that. Thank you very much.

Mr. Joshi: May I ask one question? What about the position of Labour legislation as a Federal subject?

Chairman: Well, that is a very proper question. We had better take that to-morrow.

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(*The Committee adjourned at 1-45 p.m.*)

PROCEEDINGS OF THE FIFTY-THIRD MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON FRIDAY, 27TH NOVEMBER, 1931, AT 3-0 P.M.

Consideration of the Draft Fourth Report on Financial Safeguards.

Chairman: With the leave of the Committee, I will do as we always do. In accordance with our practice, I will read through the whole of the Report and then come back and invite you to make any comments you desire to make on each one of the paragraphs.

(*The Chairman here read paragraphs of the Draft Fourth Report dealing with Financial Safeguards.*)*

1. In paragraph 11 of their Second Report the Committee in recording the general agreement, to which reference has been made in an earlier paragraph of this Report, that the

* These paragraphs, as amended in consequence of the ensuing discussion, are printed as paragraphs 13—15 of the Fourth Report of the Federal Structure Committee. (*See* pages 1267 to 1269.

assumption by India of all the powers and responsibility which have hitherto rested on Parliament cannot be made at one step, recorded the consequential opinion that, during a period of transition in certain situations which may arise outside the sphere of the reserved subjects, the Governor-General must be at liberty to act on his own responsibility, and must be given the powers necessary to implement his decision. And in paragraphs 14 and 18 to 20 of the same Report, they then proceeded to indicate in some detail their view of those situations in the financial sphere for which such special provision would be necessary. Their proposals in this connection were based upon the following fundamental propositions:—

(1) That it is essential that the financial stability and credit of India should be maintained;

(2) That the financial credit of any country rests in the last resort upon the confidence of the investor, actual and potential;

(3) That one result of the connection which has subsisted between India and the United Kingdom has been that her credit in the money markets of the world has hitherto been in practice closely bound up with British credit; and

(4) That a change in her constitutional relations with the United Kingdom which involved a sudden severance of the financial link between the United Kingdom and India would disturb confidence and so place the new Indian Government and Legislature at a grave disadvantage.

2. The proposals designed to avert such a situation have been further discussed at the Committee's present session. While some members consider that in present circumstances the proposals in paragraphs 18 to 20 of the Second Report may not prove sufficient, others have advanced the view that they erred on the side of caution, and that since there was no ground for postulating imprudence on the part of the responsible Executive and Legislature of the future nothing further was required in order to ensure financial stability, in addition to the normal powers of veto which would vest in the Governor-General, than the establishment, pending the creation of a Reserve Bank, of a Statutory Advisory Council, so constituted as to reflect the best financial opinion of both India and London, which would be charged with the duty of examining and advising upon financial and monetary policy. It was, however, suggested by those who held such views that it might be advisable to provide that in the event of the rejection by the Legislature of the Government's proposals for the raising of revenue in any given year, the provision made for the last financial year should continue automatically to be operative. Some members again, who had not participated in the Committee's earlier discussions, went

further in their objection to the financial safeguards, and expressed themselves as unwilling to contemplate any limitations upon the powers of an Indian Finance Minister to administer his charge in full responsibility to the Legislature, on the ground that a constitution which did not concede complete control of finance to the Legislature could not be described as responsible government.

3. The majority of the Committee adhere to the principles enunciated in their previous Report. They feel strongly that if the attitude of caution with which they approached this question last January was justified—as they are convinced by the considerations stated in paragraph 1 of this Report that it was—the financial crisis which has since overwhelmed both the United Kingdom and India in common with so many other countries has still further reinforced its necessity. They feel further that in the conditions of complete, uncertainty and instability now so widely prevailing, it would serve no useful practical purpose here and now meticulously to examine, or to attempt to decide upon, the precise means to adopt to ensure and command confidence in the stability of the new order, and a safe transition to it from the old. The majority of the Committee therefore record it as their view that the conclusions reached in the Committee's Second Report form an appropriate basis for approach to the task of framing the constitutional definitions of the powers and interplay in the sphere of finance of the various elements which will compose the Federal Authority which they envisage, and that it would be premature at this stage to attempt to elaborate the application of these conclusions. While they are prepared to explore more fully the suggestion of an Advisory Finance Council, they cannot on the basis of the discussion that has taken place commit themselves to the view that such a Council would adequately secure the effective maintenance of confidence in the credit of India, which must be the essential test of the measures necessary in the sphere of finance.

Chairman: Now if you will kindly go back to the first page, paragraph 1, does anybody want to make any criticism on paragraph 1?

Pandit M. M. Malaviya: In sub-paragraph (2) you say:

> "That the financial credit of any country rests in the last resort upon the confidence of the investor, actual and potential."

Are those words actually essential?

Chairman: What it means is the investor or people who may become investors. Supposing I am not an investor in India, I might still be a man who perhaps wanted to invest in India and so I should be a potential investor.

Pandit M. M. Malaviya: Then the potential investor may be not merely an English investor, but other people too?

Sir Samuel Hoare: That is just what it means.

Chairman: Yes, that is what it means.

Pandit M. M. Malaviya: It means both actual and potential. Is it essential to keep those words?

Chairman: It is almost an Irishism as we call it. A man is not an investor, but he may be an investor. It sounds funny to put it in that way, but it is intended to cover people who actually have invested money, and therefore we want to retain their confidence, and people who, at some future date, may become investors. If there is nothing else on this paragraph, will you turn over the page and we will come to paragraph 2?

Sir Purshotamdas Thakurdas: May I ask whether the members who were present last time agreed with sub-paragraph (4) of paragraph 1?

Chairman: You mean whether the people who were parties to the last Report will also be parties to sub-paragraph (4)?

Sir Purshotamdas Thakurdas: Whether they think this is a correct inference from their Report?

Chairman: Let us read it again.

> " And that a change in her financial relations with the United Kingdom which involved a sudden severance—"

those are the words, " sudden severance "—

> " of the financial link between the United Kingdom and India would disturb confidence and so place the new Indian Government and Legislature at a grave disadvantage."

I should think most of us—all of us, I should think—would agree to that word " sudden."

Sir Purshotamdas Thakurdas: But then the question arises whether what they suggested is sudden.

Chairman: Yes, but all they are committed to here is this statement—

> " that a change in her constitutional relations with the United Kingdom, which involved a sudden severance of the financial link between the United Kingdom and India, would disturb confidence."

Sir Purshotamdas Thakurdas: My point is that the change we indicated in the last Report could by no means be said to be a sudden severance of the financial link. Therefore, that phrase as I read it is rather a far fetched inference to make from that Report. However, it is not for me, as I was not a party to the Report, to say what it meant. I am only enquiring whether those who were parties to that Report agree with the inference.

Pandit M. M. Malaviya: I think it is objectionable to put this paragraph in.

Sir Purshotamdas Thakurdas: If I may say so, it is not for us who were not present last time to criticise. It is for those who were present to say.

Chairman: Sir Tej Bahadur Sapru, do you object?

Sir Tej Bahadur Sapru: I see no objection to it. The paragraph says:—

> "And that a change in her constitutional relations with the United Kingdom, which involved a sudden severance of the financial link between the United Kingdom and India would disturb confidence and so place the new Indian Government and Legislature at a grave disadvantage."

The word "sudden," in my opinion, has reference to the temporary, or shall we say, transitional changes we contemplated at that time. It is quite a different question whether we shall have transitional changes, but once you accept transitional changes the word "sudden" is true.

Pandit M. M. Malaviya: That proposition, as I understand it, is now formulated for the first time. It is not reproduced from what was said last year. Am I right in saying that?

Chairman: It is not a question in which you are involved at all.

Pandit M. M. Malaviya: If this is formulated for the first time in these words, I suggest it is not justified. It says:—

> "And that a change in her constitutional relations with the United Kingdom, which involved a sudden severance of the financial link between the United Kingdom and India, would disturb confidence and so place the new Indian Government and Legislature at a grave disadvantage."

A sudden severance of the financial link can only mean exercise by the Secretary of State of the authority he possesses over the Indian Government in matters financial. I do not think in the discussions which have proceeded it has been agreed that that control shall continue to be exercised.

Other arrangements have been considered in order to create confidence during the period of transition, but these do not necessarily imply the continuance of the financial link by the exercise of the financial powers of the Secretary of State. The only financial link which connects England with India officially is the Secretary of State.

Mr. Iyengar: I would suggest that instead of the word "link" in this paragraph the word "relations" should be used.

Chairman: Sir Tej Bahadur Sapru, is satisfied with this wording. I think we had better leave it.

Sir Tej Bahadur Sapru: I should like to add one word arising out of the remarks by Pandit Malaviya. He seems to think that those who agreed with the substance of the proposition last year contemplated the continued control of the Secretary of State. I do not interpret this as assuming anything of the kind. But apart

from the control of the Secretary of State, there are other financial links, and I believe the word "sudden" in this paragraph is used to denote the period of transition. We are satisfied that there would be a Reserve Bank, and we should have to make some provision for that purpose.

Mr. Benthall: Can we not make the word "links," in the plural?

Chairman: I accept Sir Tej Bahadur Sapru's interpretation. It is certainly what we meant.

Sir Purshotamdas Thakurdas: If the plural is to be used, I beg to submit that it is not being contended by the other side that we are disturbing more than one link. It is not suggested that any other link may be touched. Therefore the plural would not be applicable at all. The link is the Secretary of State's control. There is only one link. What is the other link Sir Tej Bahadur Sapru has in mind?

Sir Tej Bahadur Sapru: Well, the relations between the two countries. I certainly did not mean by the financial link the link of the Secretary of State.

Sir Purshotamdas Thakurdas: I do not know whether it would be agreed that that is not intended.

Pandit M. M. Malaviya: May we know what the financial link indicates in this paragraph if it does not indicate the control which the Secretary of State exercises over the Government of India?

Chairman: You have heard what Sir Tej Bahadur Sapru says. I cannot put it better than that. We are now stating what those gentlemen who were here on the last occasion put forward.

Pandit M. M. Malaviya: Sir Tej Bahadur Sapru has said that it does not mean the continuation of the financial powers of the Secretary of State. Is that accepted by the Secretary of State?

Sir Samuel Hoare: To me it is a general term. I do not want to define what it is. I think it is much better to leave it general like this. It is stating the fact which was the very basis of our discussions last year. If it had not been for this fact that a sudden severance of the link, whatever that link might be, would shake India's credit, there would have been no discussion of safeguards, and I imagine that a good many of the gentlemen who agreed to safeguards last year would not have agreed to them.

Sir Purshotamdas Thakurdas: The difficulty is this, that we who are parties to this Report, before we give our assent to it, must understand what each word and phrase carries.

Sir Samuel Hoare: I would not admit that at all in a sentence of this kind. It is merely a historical fact of what took place last year.

Sir Purshotamdas Thakurdas: And it is just that historical fact that I do not agree with.

Sir Samuel Hoare: You may not agree with it but it was the fact as it emerged last year. Historically speaking, I think this accurately describes one of the results of our discussions last year.

Sir Purshotamdas Thakurdas: Sir Tej Bahadur Sapru does not inform us that that was his intention, by any means.

Lord Reading: Would not it meet the situation if you make it in the plural and say " links " instead of " link "?

Pandit M. M. Malaviya: That would make it worse, because at present we are trying to cut only one link.

Mr. Jayakar: I suggest if there is the slightest chance of these words " financial link " being misconstrued it will be better to put the words " financial relations."

Pandit M. M. Malaviya: We are providing safeguards which will satisfy British interests, and no other interest will suffer. All the discussions we have had have been to ensure that there shall be no want of confidence by disturbance of other relations. As this stands, my objection to it is that it puts forward a proposition which is not correct and which will not fit in with what we have been discussing. We have been discussing safeguards which should be agreed upon. This statement, " a sudden severance of the financial link between the United Kingdom and India would disturb confidence," cannot mean anything except the relationship which the Secretary of State has to the Government of India, and to say that the sudden severance of that link will disturb the confidence and so place the new Indian Government at a great disadvantage is to go against the propositions which have been agreed upon.

Chairman: I do not quite follow that. If you would be good enough to look at the beginning of it again, it is their proposal in this connection.

Pandit M. M. Malaviya: That is why I asked whether this was the language that was formulated last year. It is not so. This has been formulated for the first time this year, and as it has been formulated for the first time this year, I request that the language used should be such as can be agreed upon and which should seem to us who are here now exactly to express what was decided upon last year.

Lord Reading: Is not the true position here that we are merely stating what were the fundamental propositions upon which the Report of last year was based? And that is surely a matter on which those who were present are best able to speak.

Pandit M. M. Malaviya: Those discussions are recorded, and this goes beyond them.

Lord Reading: It really does not. It states what the proposition is based upon.

Pandit M. M. Malaviya: Suppose it is decided that the control which the Secretary of State at present exercises over the Government of India should be exercised hereafter in India by such

arrangement as Your Lordship, for instance, has already contemplated, of the establishment of a Reserve Bank, and by another arrangement such as is in contemplation of a Financial Advisory Board, then I submit the link which connects England through the Secretary of State with India at present would be severed.

Lord Reading: This does not touch that. This statement does not affect anything you have said.

Chairman: I think we could all get agreed upon this by the insertion of a couple of words. The Pandit Malaviya is of this opinion; he says: "On the last occasion the Committee came to certain recommendations or certain views and you want to state them." But you have not stated them properly because I do not think, from what I know or from what I have heard, that the proposals of the Committee on the last occasion were based upon these fundamental provisions, and so I think what I shall put in now is this:—

> "Their proposals in this connection were based by some of them"—

that is by some of the members of the Committee—

> "upon the following fundamental propositions."

Certainly mine were; that includes me. And then you will be able to say: "Well, you were foolish enough, Lord Chancellor, to base your proposals upon those fundamental propositions, but other people did not;" and that will meet your point. It will read:—

> "The proposals"—not "their proposals"—"the proposals in this connection were based by some of the members upon the following fundamental propositions."

Pandit M. M. Malaviya: Would Your Lordship say: "In view of some of the Committee," or "In the opinion of some members of the Committee"?

Chairman: Yes, I can say that. Where do you want that to come in?

> "The proposals in this connection were based in the opinion of some members of the Committee upon the following propositions."

Pandit M. M. Malaviya: Yes.

Chairman: Very well, I will accept that.

Pandit M. M. Malaviya: Will you also kindly put in in some place an expression to show that some of us do not agree that this is a correct view of what took place last year?

Chairman: No, I will not put that in.

Lord Reading: How can those who were not present express a view as to that?

Chairman: How can you express that view?

Pandit M. M. Malaviya: From the records.

Chairman: I cannot do that. You can point that out later on. I really have met you very very fairly, if you will permit me to say so. Now paragraph 2.

Sir Purshotamdas Thakurdas: My Lord, regarding paragraph 2, I see the words " Reserve Bank " occur in this for the first time and perhaps the only time. May I ask whether it is proposed to say anything regarding how the Reserve Bank can be started whenever it is possible to start it, and by legislation where? That is a point, Your Lordship will remember that I specifically referred to, and I do think it is important for us to know whether this Committee is going to express any opinion on that score or not.

Chairman: Well, what would you like put in?

Sir Purshotamdas Thakurdas: My personal opinion is that it should be started by a Statute in the Legislative Assembly.

Sir Tej Bahadur Sapru: Will you have: " by the creation by the Indian Legislature of a Reserve bank "?

Sir Purshotamdas Thakurdas: I will be quite satisfied with that, Sir.

Mr. Sastri: I see Lord Reading indicating dissent.

Chairman: I think I will accept that.

Sir Tej Bahadur Sapru: " Pending the creation by the Indian Legislature."

Chairman: Yes: " Pending the creation by the Indian Legislature." Will that meet you, Sir Purshotamdas?

Sir Purshotamdas Thakurdas: Yes; that is what I think myself, Sir. Thank you.

Sir Akbar Hydari: " Indian Federal Legislature ", Sir?

Sir Purshotamdas Thakurdas: Of course. It will certainly not be by any of the Provincial Legislatures. It will have to be Federal or Central. Of course, Federal.

Sir Akbar Hydari: Federal.

Chairman: Well, I will put in " Federal."

Sir Purshotamdas Thakurdas: Certainly, Sir: " by the Indian Federal Legislature."

Mr. Benthall: It might be done before the commencement of federation.

Lord Reading: How can it?

Sir Purshotamdas Thakurdas: There will be no Federal Legislature then.

Mr. Benthall: The Reserve Bank might be started next year if conditions improve.

Sir Samuel Hoare: I think there is something in Mr. Benthall's point. It is unlikely in the present state of the world. I mean

everybody wants to start the Reserve Bank as soon as possible. There is no doubt about that.

Mr. Iyengar: I think Mr. Benthall has in view the prospect that you may not have a federation for some years.

Mr. Benthall: That is possible, yes.

Mr. Iyengar: And therefore he wants to make sure that whether the federation comes or not the Reserve Bank shall come.

Chairman: There is nothing to prevent anybody doing anything. It is only dealing with after federation.

Mr. Benthall: No, but I would leave out the word "Federal" and make it "Indian."

Mr. Jayakar: It leaves it possible for both countries.

Lord Reading: I think Indian Legislature is as good as the other.

Chairman: Then we will leave out "Federal" and put in "by the Indian Legislature." Now on the next page please, paragraph 3.

Pandit M. M. Malaviya: I want to say a few words about paragraph 2 yet. May I?

Chairman: Yes, please.

Pandit M. M. Malaviya: The paragraph speaks of the creation "of a Statutory Advisory Council, so constituted as to reflect the best financial opinion of both India and London, which would be charged with the duty of examining and advising on financial and monetary policy." I thought the proposal put forward by Sir Tej Sapru was that there should be an Advisory Council on matters of currency and exchange.

Sir Tej Bahadur Sapru: That is so.

Pandit M. M. Malaviya: Therefore I suggest it should be so stated. The paragraph should read "charged with the duty of examining and advising upon questions of currency and exchange."

Sir Samuel Hoare: Financial and monetary policy means that.

Chairman: That is what it means.

Lord Reading: If he wants to limit it, I do not see any objection, but you are giving them something wider.

Chairman: Well, Pandit Malaviya, I will accept your words but, if you will forgive me saying so, they are against your own interests. I accept them, but I think it is not wise of you.

Pandit M. M. Malaviya: Are you omitting the word "financial"?

Chairman: I accept what you suggest, but they are limiting words. I advise you to keep in the words in the paragraph which do not limit but you can have whichever you like. I accept the words you suggest, but they are words which militate against your

own interests. We will make the paragraph read " charged with the duty of examining and advising on currency and exchange."

Pandit M. M. Malaviya: I asked, is it to advise on financial policy generally? I thought it was limited to currency and exchange. I have no objection to the words " monetary policy " being retained, but I object to the word " financial."

Chairman: I accept it and I will cross out the word " financial " and leave it at " monetary policy." The day will come, I am afraid, when you will regret it, but that is not my fault. Paragraph 3, please.

Sir Purshotamdas Thakurdas: I took it when the question of this Statutory Advisory Council was being discussed that it was only to go on until a Reserve Bank comes into being.

Chairman: I see what you mean.

Sir Purshotamdas Thakurdas: It may be kept on afterwards if found useful, but it need not. It would be only for the period before the Reserve Bank comes into existence.

Mr. Jayakar: The words in the paragraph are " pending the creation of a Reserve Bank."

Sir Purshotamdas Thakurdas: Does that mean with the creation of a Reserve Bank it would go out?

Mr. Jayakar: Of course.

Sir Purshotamdas Thakurdas: I do not know.

Mr. Benthall: I should have liked to say a good deal more if we were going into detail, but I think it better to leave it as vague as possible.

Chairman: Will it meet your views if I put on record that in the opinion of some members of the Committee it should come out? I will do that.

Sir Purshotamdas Thakurdas: It may not be necessary to have it afterwards.

Chairman: Very well, we will put it in in this form: " Some of the members are of opinion that it will not be necessary to have this Advisory Council after the Reserve Bank comes into existence." In what part of the paragraph would you like that inserted?

Sir Purshotamdas Thakurdas: After the words " monetary policy." I would further suggest, Sir, that it should be stated that the Statutory Railway Board will be set up only by legislation in the Indian Legislature.

Chairman: That has not yet been discussed. It is a matter we shall have to leave for future decision. I agree that it is an important thing, but we have not discussed it.

Sir Purshotamdas Thakurdas: I thought that no one had criticised what I had said on the point.

Sir Tej Bahadur Sapru: There was no unanimous decision on that point on the last occasion.

Sir Purshotamdas Thakurdas: I feel that some expression of opinion ought to go out from this Committee on the question.

Sir Tej Bahadur Sapru: There is no mention of a Statutory body whatever.

Mr. Joshi: The Statutory Board should be created by the constitution itself.

Sir Tej Bahadur Sapru: There is nothing in the Report about it.

Sardar Ujjal Singh: As a matter of fact, I pointed out that if a Statutory Authority was going to be established it should be left to the Indian Legislature.

Sir Purshotamdas Thakurdas: May I read from the second Report of the Federal Structure sub-Committee presented at the meeting of the Conference on January 15th? I quote from paragraph 19: " In this connection the sub-Committee take note of the proposal that a Statutory Railway Authority should be established, and are of opinion that this should be done, if after expert examination this course seems desirable."

Sir Tej Bahadur Sapru: The Report of the Plenary Session shows that we all objected to the Statutory Authority being created at all.

Sir Purshotamdas Thakurdas: May I take it that this present Report is not being conformed to the one I have just quoted?

Sir Tej Bahakur Sapru: Of course not.

Sir Purshotamdas Thakurdas: I thought earlier we were confirming this Report. I am quite satisfied.

Chairman: Mr. Gandhi has something that he wants to add at the end of paragraph 2.

Mr. Gandhi: I wish to add at the end of paragraph 2, after the words " responsible government " the words, " and that the derogation from complete control would hamper the Finance Minister in the discharge of his duty."

Chairman: Those words are noted.

Now we come to paragraph 3, please.

Sir Purshotamdas Thakurdas: In the first sentence of paragraph 3 you have this: " The majority of the Committee adhere to the principles enunciated in their previous Report." In view of the discussion I raised on sub-paragraph 4 of paragraph 1, I am afraid I cannot be one of the majority who adhere to those principles.

Chairman: If you will kindly look at the sentence a moment: " The majority of the Committee adhere to the principles enunciated in their previous Report; " it was not your Report at all, but I will make it clear that it does not apply to you. It was not meant to apply to you.

Sir Purshotamdas Thakurdas: Then " The majority of the Committee " there means the majority of the Committee present at the last time?

Chairman: Yes, not you.

Then going on, is there anything more on paragraph 3?

Now turn over to page 4.

Subject to those alterations which you have been good enough to indicate and which I have adopted. I will sign the Report on behalf of the Committee.

Now, Mr. Joshi, please.

Mr. Joshi: I should like to know what sort of proposal you propose to make on the question as to the power of the Federal Legislature and the Federal Government to legislate on Labour questions affecting the whole of India.

Chairman: I think what I propose to say, subject to your agreeing to it, is this. Mr. Joshi's point is of great importance. A solution of the difficulties to which he has drawn our attention will have to be found when the precise relationship between the legislative powers of the Federal and Provincial Legislatures is finally determined. In this particular matter there has not been an opportunity this Session to advance further than the general conclusions reached at the last Session and we cannot therefore report on the details of it, but further consideration will have to be given to it. Will that meet your wishes and views?

Mr. Joshi: Yes.

Chairman: Thank you very much. Then what I will do is this. That must appear somewhere, and I think it had better be appended in its proper place in the Report on the Legislatures. That, I think, would meet your views.

Mr. Sastri: Lord Chancellor, are we now winding up this Federal Structure Committee?

Chairman: I am afraid so; I am very sorry; I should have liked to have gone on.

Mr. Sastri: If so, will you allow me, as one who has been faithful in attendance in this Committee and one who, I hope, has also been equally faithful in allegiance to this Committee and its work, to say a few words to express our feelings of complete confidence in you as our Chairman.

Chairman: Thank you very much, Mr. Sastri.

Mr. Sastri: My Lord, words fail me to convey this vote of thanks. It is a vote in which our hearts are all deeply engaged. We remember the extraordinary courtesy and patience with which you permitted us to wander over a range which, already wide in itself, was I fear not wide enough for the purposes of the discussion of some among us.

Chairman: Quite right.

Mr. Sastri: You gave us a free hand, and, if I may say so, in allowing us to revel in our freedom you have possibly contributed to the efficiency of this Committee's work. Moreover, Sir, there is

just one word which I would like to say at the end of our sittings, and in this I hope I carry the judgment and the wishes of every single member of this Committee. Our Committee's work has been of the utmost importance to the mission which has brought us all to this country. It has in India and in England aroused the greatest possible attention. It is quite likely that in much that we said and in much that we did we have made errors of judgment. It is quite likely that in much of the work that we have actually done we have not succeeded in carrying the judgment and the wishes of either the people in India or the people in this country; but amongst ourselves, although there were sometimes differences of a sharp kind between one section and another, there has prevailed a most wonderful spirit of cordiality, a spirit of give-and-take upon all sides, British and Indian, Indian States and British India, Labour and non-Labour. Upon all sides there has been an admirable spirit and a willingness that the labours of this Committee and, therefore, the labours of the Conference, should reach a successful and happy issue. That dominant feature of the proceedings of this Committee has been in large measure secured, I believe, by the absolute impartiality and by the rulings of our Chairman, by the way in which when we sometimes fell from the high standard which he would have set, he continually reminded us that in our speeches and in our deliberations we must not fix our eyes upon the little part of India and Indian policy to which we belong, but upon that future united and integral India which we are all trying to build up. That ideal the Lord Chancellor never allowed to fade from his own mind or from the mind of any one of us. For that act as well as for others we stand deeply indebted to you and we believe that if ever we are engaged upon a task of equal difficulty and complexity we could never wish ourselves greater good fortune than to have a Chairman of your type and your character.

Chairman: Thank you very much.

Sir Tej Bahadur Sapru: My Lord Chancellor, will you permit me to say one or two words following the very warm tribute which has been paid to you as Chairman of this Committee by my friend Mr. Sastri? I cannot add many words. I will only venture to say this much, that whatever the future is going to be and whatever the result is going to be of our labours here, everyone of us will agree that we owe to you a deep debt of gratitude for the manner in which you have conducted our proceedings this year as well as last year. It has been a genuine pleasure to have worked with you and for many of us it will be a very pleasant memory when we have gone back from your delightful country. I would only venture in the tribute that has been paid to Your Lordship to associate the members of the staff and your advisers who have borne the brunt of the day. The outside world judges the work of this Conference by the amount of oratory that has flowed round this table, but the outside world does not know what amount of thought and labour has been put into the various decisions that has been arrived at and the amount of labour involved in the Reports that have been pre-

pared and prepared so skilfully and with so much rapidity. I would like, therefore, to express a genuine sense of admiration for the manner in which they have worked with you.

Mr. Jinnah: My Lord Chancellor, I should like to endorse every word that has been said by the Right Honourable Mr. Sastri and Sir Tej Bahadur Sapru. May I add one word more? It is this. I think we fully expected you, Sir, to discharge your duties impartially, justly and fearlessly, but what you have done is not merely what was expected of you. You have made us all feel that you have discharged your duty in that direction. It is one thing for the Chairman to be impartial, but it is another thing to make every member of the Committee feel that you have acted up to those principles. You have upheld our rights and our privileges as members of this Committee in a manner which I say no other Chairman could possibly have done, in spite of all the trying situations that have arisen from time to time. I wholeheartedly congratulate you that you have won the heart of every member of this Committee. What may be the result of the work of this Committee is another matter but you have discharged your duty magnificently.

Chairman: Thank you very much, Mr. Jinnah.

H.H. The Nawab of Bhopal: We of the Indian States wish to associate ourselves with every word that has just been said, and we all join most sincerely in the vote of thanks that has been moved to you, Lord Chancellor, and with the tribute that has been paid to members of the staff.

Mrs. Subbarayan: I entirely associate myself with the warm tribute paid by Mr. Sastri and Sir Tej Bahadur Sapru and others. As a new member, a lay member, and a minority of one, I found that your kindness and encouragement mitigated my terrors on entering an assembly of experts. Our deliberations have been carried on in an atmosphere of genuine friendliness and sympathy which have radiated from the Chair upon the Committee, and I am sure we are all very grateful to you for all your kindness.

Chairman: Your Highnesses, My Lords, Ladies and Gentlemen, I am very touched—no one could help being touched—by your very kind expressions of opinion, and the cordial way in which all of you have received the too kind remarks made by the various speakers. But I should first of all like to say how much I have been helped in my labours by the distinguished civil servants who have been here in daily attendance. I do not think it is any secret—if it is a secret, it shall no longer be one—that since you left these shores on the last occasion I have been presiding over a committee of civil servants, seven or eight in number, who have been discussing all the questions that we have discussed here. We have often met as many as four times a week, and our meetings are to be counted not by the dozen but by the score, and memoranda have been produced which are of the greatest possible assistance to us all. I desire that those civil servants should have the chief share in any praise that may be mentioned.

As for myself, although the task may be a difficult one, especially when I have had to hurry you up, as happened this week, it has been an exceedingly pleasant one, and I want to say this, first, last and all the time, I am in favour of a Federal India. I am not going to desert you, and I am going to take good care that nobody does desert you, and I do not think anybody desires to do so. In my view a Federal India is not only possible, I think a Federal India is probable. And the sooner we can satisfy your aspirations the better for everybody. I am not going to say goodbye. I hope I shall meet you again somewhere, some day, and I hope at any rate that I shall be one of the first to be able to congratulate India upon having achieved what I know to be its ambition, and what I know will bring it peace and prosperity at the last. I thank you.

(The Committee adjourned at 4-5 p.m.)

FOURTH REPORT OF FEDERAL STRUCTURE COMMITTEE.

1. The Committee, when discussing the subjects covered by this Report, *viz.*, Defence, External Relations, Financial Safeguards and Commercial Discrimination, did not have the advantage of hearing the views of the Muslim members of the British Indian Delegation who reserved their opinion on such questions until such time as a satisfactory solution had been found of the problems which confronted the Minorities Committee. Some other representatives of minorities similarly reserved their opinion.

Defence.

2. Our consideration of the question of Defence in its constitutional aspect is based on the principle enunciated in the Defence sub-Committee at the last Session that "The Defence of India must, to an increasing extent, be the concern of the Indian people, and not of the British Government alone."

3. The view was strongly put forward by some members that no true responsibility for its own government will be conferred on India unless the subject of Defence (involving, of course, the control of the Army in India, including that of the British troops) is immediately placed in the hands of an Indian Ministry responsible to an Indian Legislature, with any safeguards that can be shown to be necessary.

4. The majority of the Committee are unable to share this view. They consider that it is impossible to vest in an Indian Legislature during the period of transition the constitutional responsibility for controlling Defence, so long as the burden of actual responsibility cannot be simultaneously transferred.

5. The majority of the Committee therefore reaffirm the conclusion reached in the Committee at the last Session that "the assumption by India of all the powers and responsibility which have hitherto rested on Parliament cannot be made at one step and that, during a period of transition, the Governor-General shall be responsible for Defence,"* being assisted by a "Minister" of his own choice responsible to him and not to the Legislature.

6. At the same time there is no disagreement with the view that the Indian Legislature must be deeply concerned with many aspects of Defence. It is undeniable that there can be no diminution of such opportunities as the present Legislature possesses of discussing and through discussion of influencing Defence administration. While the size, composition and cost of the Army are matters essentially for those on whom the responsibility rests and their expert advisers, yet they are not questions on which there

* See paragraph 11 of the Second Report of the Federal Structure sub-Committee.

can be no voicing of public opinion through constitutional channels. The Legislature would thus continue to be brought into the counsels of the Administration in the discussion of such outstanding problems as the carrying out of the policy of Indianisation. Further, there must be correlation of military and civil administration where the two spheres, as must sometimes inevitably be the case, are found to overlap. In the latter connection the suggestion was made that a body should be set up in India analogous to the Committee of Imperial Defence in Great Britain. Some members of the Committee considered that even though responsibility for the administration of the Army might remain, during a period of transition, with the Governor-General, the final voice on such questions as the size, composition and cost of the Army should rest with the Legislature.

7. To secure the measure of participation contemplated under paragraph 6 by the majority of the Committee, various suggestions were made, the cardinal feature of which, in almost all instances, was the precise position to be assigned to the " Minister " appointed by the Governor-General to take charge of the Defence portfolio. It was assumed that his functions would roughly correspond to those of the Secretary of State for War in the United Kingdom. Among the more important proposals made were the following:—

(*i*) The " Minister," while primarily responsible to the Governor-General, should, as regards certain aspects only of Defence, be responsible to the Legislature.

(*ii*) The " Minister," though responsible to the Governor-General, should be an Indian; and he might be chosen from among the Members of the Legislature.

(*iii*) The " Minister," of the character contemplated in (*ii*), should be considered to be a Member of the " responsible " Ministry, participating in all their discussions, enjoyng joint responsibility with them, and in the event of a defeat in Legislature over a question not relating to the Army should resign with them though, of course, remaining eligible for immediate re-appointment by the Governor-General.

8. While some of these suggestions contain the germs of possible lines of development, it is impossible to escape from the conclusion (*a*) that, so long as the Governor-General is responsible for Defence, the constitution must provide that the Defence " Minister " should be appointed at the unfettered discretion of the Governor-General and should be responsible to him alone, and (*b*) that this " Minister's " relations with the rest of the Ministry and with the Legislature must be left to the evolution of political usage within the framework of the constitution.

9. The view was put forward that, while supply for the defence services should not be subject to the annual vote of the Legislature, agreement should be sought at the outset on a basic figure for such

expenditure for a period of, say, five years, subject to joint review by the Legislature and representatives of the Crown at the end of such period, with special powers in the Governor-General to incur expenditure in cases of emergencies. The details of any such plan should receive further careful examination.

External Relations.

10. Very similar considerations to those governing the constitutional treatment of Defence apply in the case of the subject of External Relations, and in general the views expressed by members of the Committee on this subject followed closely their opinions regarding the constitutional provisions in relation to Defence. In particular the majority of the Committee reaffirm the view taken in the Second Report of the sub-Committee (paragraph 11) that the Governor-General should be responsible for External Relations.

11. There is, however, a difficulty in connection with External Relations which hardly arises in the case of Defence, *viz.*, that of defining the content of the subject. The reserved subject of External Relations would be confined primarily to the subject of political relations with countries external to India and relations with the frontier tracts. Commercial, economic and other relations would fall primarily within the purview of the Legislature and of Ministers responsible thereto; in so far, however, as questions of the latter character might react on political questions, a special responsibility will devolve upon the Governor-General to secure that they are so handled as not to conflict with his responsibility for the control of external relations. There will accordingly be need for close co-operation, by whatever means may prove through experience most suitable for securing it, between the Minister holding the portfolio of "External Relations" and his colleagues the "responsible" Ministers.

12. Some misunderstanding may have been caused by the description, in paragraph 11 (*ii*) of the sub-Committee's second Report, of External Relations as including "Relations with the Indian States outside the Federal sphere." As set out in the Prime Minister's declaration at the close of the last Session, "The connection of the States with the Federation will remain subject to the basic principle that in regard to all matters not ceded by them to the Federation their relations will be with the Crown acting through the agency of the Viceroy."

Financial Safeguards.

13. In paragraph 11 of their Second Report the sub-Committee in recording the general agreement, to which reference has been made in an earlier paragraph of this Report, that the assumption by India of all the powers and responsibility which have hitherto rested on Parliament cannot be made at one step, recorded the consequential opinion that, during a period of transition in certain

situations which may arise outside the sphere of the Reserved Subjects, the Governor-General must be at liberty to act on his own responsibility, and must be given the powers necessary to implement his decision. And in paragraphs 14 and 18 to 20 of the same Report, they then proceeded to indicate in some detail their view of those situations in the financial sphere for which such special provision would be necessary. The proposals in this connection were, in the view of some members of the Committee, based upon the following fundamental propositions:—

(1) that it is essential that the financial stability and credit of India should be maintained;

(2) that the financial credit of any country rests in the last resort upon the confidence of the investor, actual and potential;

(3) that one result of the connection which has subsisted between India and the United Kingdom has been that her credit in the money markets of the world has hitherto been in practice closely bound up with British credit; and

(4) that a change in her constitutional relations with the United Kingdom which involved a sudden severance of the financial link between the United Kingdom and India would disturb confidence and so place the new Indian Government and Legislature at a grave disadvantage.

14. The proposals designed to avert such a situation have been further discussed at the Committee's present Session. While some members consider that in present circumstances the proposals in paragraphs 18 to 20 of the Second Report may not prove sufficient, others have advanced the view that they erred on the side of caution, and that since there was no ground for postulating imprudence on the part of the responsible Executive and Legislature of the future, nothing further was required in order to ensure financial stability, in addition to the normal powers of veto which would vest in the Governor-General, than the establishment, pending the creation by the Indian Legislature of a Reserve Bank, of a Statutory Advisory Council, so constituted as to reflect the best financial opinion of both India and London, which would be charged with the duty of examining and advising upon monetary policy. (Some of those who took this view were of opinion that it might not be necessary for the Statutory Advisory Council to remain in existence after the Reserve Bank has been established). It was, however, suggested by those who held such views that it might be advisable to provide that in the event of the rejection by the Legislature of the Government's proposals for the raising of revenue in any given year, the provision made for the last financial year should continue automatically to be operative.

Some members again, who had not participated in the Committee's earlier discussions, went further in their objection to the financial safeguards, and expressed themselves as unwilling

to contemplate any limitations upon the powers of an Indian Finance Minister to administer his charge in full responsibility to the Legislature, on the ground that a constitution which did not concede complete control of finance to the Legislature could not be described as responsible government, and that derogation from complete control would hamper the Finance Minister in the dischrage of his duties.

15. The majority of the Committee adhere to the principles enunciated in their previous Report. They feel strongly that if the attitude of caution with which they approached this question last January was justified—as they are convinced by the considerations stated in paragraph 13 of this Report that it was—the financial crisis which has since overwhelmed both the United Kingdom and India in common with so many other countries has still further reinforced its necessity. They feel further that in the conditions of complete uncertainty and instability now so widely prevailing, it would serve no useful practical purpose here and now meticulously to examine or to attempt to decide upon the precise means to adopt to ensure and command confidence in the stability of the new order, and a safe transition to it from the old. The majority of the Committee therefore record it as their view that the conclusions reached in the Committee's Second Report form an appropriate basis for approach to the task of framing the constitutional definitions of the powers and interplay in the sphere of finance of the various elements which will compose the Federal Authority which they envisage, and that it would be premature at this stage to attempt to elaborate the application of these conclusions. While they are prepared to explore more fully the suggestion of an Advisory Finance Council, they cannot on the basis of the discussion that has taken place commit themselves to the view that such a Council would adequately secure the effective maintenance of confidence in the credit of India, which must be the essential test of the measures necessary in the sphere of finance.

Commercial Discrimination.

16. On this subject the Committee are glad to be able to record a substantial measure of agreement. They recall that in paragraph 22 of their Report at the last Conference it was stated that there was general agreement that in matters of trade and commerce the principle of equality of treatment ought to be established, and that the Committee of the whole Conference at their meeting on January 19th, 1931, adopted the following paragraph as part of the Report of the Minorities sub-Committee:—

> "At the instance of the British Commercial community the principle was generally agreed that there should be no discrimination between the rights of the British mercantile community, firms and companies trading in India, and the rights of Indian born subjects, and that an appropriate Con-

vention based on reciprocity should be entered into for the purpose of regulating these rights."

More than one member in the course of the discussion also reminded the Committee that the All-Parties Conference in 1928 stated in their Report that " it is inconceivable that there can be any discriminating legislation against any community doing business lawfully in India."

17. The Committee accept and re-affirm the principle that equal rights and equal opportunities should be afforded to those lawfully engaged in commerce and industry within the territory of the Federation, and such differences as have manifested themselves are mainly (though not entirely) concerned with the limits within which the principle should operate and the best method of giving effect to it.

Some, however, contend that the future Government should not be burdened with any restriction save that no discrimination should be made merely on the ground of race, colour or creed.

18. The Committee are of opinion that no subject of the Crown who may be ordinarily resident or carrying on trade or business in British India, should be subjected to any disability or discrimination, legislative or administrative, by reason of his race, descent, religion, or place of birth, in respect of taxation, the holding of property, the carrying on of any profession, trade or business, or in respect of residence or travel. *The expression " subject " must here be understood as including firms, companies and corporations carrying on business within the area of the Federation, as well as private individuals. The Committee are also of opinion that, *mutatis mutandis*, the principle should be made applicable in respect of the same matters so far as they fall within the federal sphere, in the case of Indian States which become members of the Federation and the subjects of those States.

The States representatives expressed themselves willing to accept this principle provided that those who claim equal rights under it do not ask for discrimination in their favour in the matter of jurisdiction and will submit themselves to the jurisdiction of the States.

19. It will be observed that the suggestion contained in the preceding paragraph is not restricted to matters of Commercial Discrimination only, nor to the European community as such. It appears to the Committee that the question of Commercial Discrimination is only one aspect, though a most important one, of a much wider question, which affects the interests of all communities alike, if due effect is to be given to the principle of equal rights and opportunities for all.

20. More than one member of the Committee expressed anxiety lest a provision in the constitution on the above lines should hamper

* As regards the interpretation of this sentence, see the remarks of Sir P. Thakurdas and Lord Sankey in the Plenary Session of 28th November, 1931, on presentation of the Report.

the freedom of action of the future Indian Legislature in promoting what it might regard as the legitimate economic interests of India. The Committee do not think that these fears are well-founded. Key industries can be protected and unfair competition penalised without the use of discriminatory measures. The Committee are, however, of opinion that it should be made clear that where the Legislature has determined upon some system of bounties or subsidies for the purpose of encouraging local indutries, the right to attach reasonable conditions to any such grant from public funds is fully recognised, as it was recognised in 1925 by the External Capital Committee, and is recognised to-day by the practice of the Government of India itself.

21. It should however also be made clear that bounties or subsidies, if offered, would be available to all who were willing to comply with such conditions as may be prescribed. The principle should be a fair field and no favour. Thus a good deal was said in the course of the discussion of the need for enabling Indian concerns to compete more effectively with larger and longer-established businesses, usually under British management and financed with British capital. Where the larger business makes use of unfair methods of competition, the general law should be sufficient to deal with it; but many members of the Committee were impressed with the danger of admitting a claim to legislate, not for the purpose of regulating unfair competition generally, but of destroying in a particular case the competitive power of a large industry in order to promote the interests of a smaller one.

A view was expressed by some members, with reference to this and the preceding paragraph, that so far as the grant of bounties and subsidies is concerned it must be within the competence of the Legislature to confine them to Indians or companies with Indian capital.

The position of others was that set out at the end of paragraph 17.

22. With regard to method, it appears to the Committee that the constitution should contain a clause prohibiting legislative or administrative* discrimination in the matters set out above and defining those persons and bodies to whom the clause is to apply. A completely satisfactory clause would no doubt be difficult to frame, and the Committee have not attempted the task themselves. They content themselves with saying that (despite the contrary view expressed by the Statutory Commission in paragraph 156 of their Report) they see no reason to doubt that an experienced Parliamentary draftsman would be able to devise an adequate and workable formula, which it would not be beyond the competence of a Court of Law to interpret and make effective. With regard to the persons and bodies to whom the clause will apply, it was suggested by some that the constitution should define those persons who are to be

* Two members would not include administrative discrimination within the scope of the clause.

regarded as " citizens " of the Federation, and that the clause should apply to the " citizens " as so defined; this indeed was a suggestion which had been made by the All-Parties Conference. There are however disadvantages in attempting to define the ambit of economic rights in terms of a political definition, and a definition which included a corporation or limited company in the expression " citizen " would be in any event highly artificial. The Committee are of opinion, therefore, that the clause should itself describe those persons and bodies to whom it is to be applicable on the lines of paragraph 18, and that the question should not be complicated by definitions of citizenship.

23. If the above proposals are adopted, discriminatory legislation would be a matter for review by the Federal Court. To some extent this would also be true of administrative discrimination; but the real safeguard against the latter must be looked for rather in the good faith and common sense of the different branches of the executive government, reinforced, where necessary, by the special powers vested in the Governor-General and the Provincial Governors. It is also plain that where the Governor-General or a Provincial Governor is satisfied that proposed legislation, though possibly not on the face of it discriminatory, nevertheless will be discriminatory in fact, he will be called upon, in virtue of his special obligations in relation to minorities, to consider whether it is not his duty to refuse his assent to the Bill or to reserve it for the signification of His Majesty's pleasure.

24. The question of persons and bodies in the United Kingdom trading with India, but neither resident nor possessing establishments there, requires rather different treatment. Such persons and bodies clearly do not stand on the same footing as those with whom this Report has hitherto been dealing. Nevertheless, the Committee were generally of opinion that, subject to certain reservations, they ought to be freely accorded, upon a basis of reciprocity, the right to enter and trade with India. It will be for the future Indian Legislature to decide whether and to what extent such rights should be accorded to others than individuals ordinarily resident in the United Kingdom or companies registered there, subject of course to similar rights being accorded to residents in India and to Indian companies. It is scarcely necessary to say that nothing in this paragraph is intended to limit in any way the power to impose duties upon imports into India, or otherwise to regulate its foreign trade.

25. It had been suggested at the last Conference, and the suggestion was made again in the course of the discussion in the Committee, that the above matters might be conveniently dealt with by means of a Convention to be made between the two countries, setting out in greater detail than it was thought would be possible in a clause in an Act the various topics on which agreement can be secured. The idea is an attractive one, but appears to present certain practical difficulties. The Committee

understand that the intention of those who suggested it is that the Convention, if made, should be scheduled to and become part of the Constitution Act. It was, however, pointed out that such a detailed Convention would be more appropriately made between the United Kingdom and the future Indian Government when the latter was constituted, and that, in any event, it seemed scarcely appropriate in a Constitution Act. On the other hand, the Committee are of opinion that an appropriately drafted clause might be included in the Constitution itself, recognising the rights of persons and bodies in the United Kingdom to enter and trade with India on terms no less favourable than those on which persons and bodies in India enter and trade with the United Kingdom.

26. In conclusion, there was general agreement (subject to the view of certain members, set out at the end of paragraph 17), to the proposal that property rights should be guaranteed in the constitution, and that provision should be made whereby no person can be deprived of his property, save by due process of law and for public purposes, and then only on payment of fair and just compensation to be assessed by a Judicial Tribunal. In the case of the States, this principle may need some modification to avoid conflict with their internal rights. A provision of the kind contemplated appears to the Committee to be a necessary complement of the earlier part of this Report. Such a formula finds a place in many constitutions, and the form used in the Polish Constitution seemed to the Committee to be specially worthy of consideration.

Signed, on behalf of the Committee,

SANKEY.

ST. JAMES'S PALACE, LONDON;
27th November, 1931.

APPENDIX I.

MEMORANDUM ON FEDERAL FINANCE PREPARED BY THE FINANCE DEPARTMENT OF THE GOVERNMENT OF INDIA.

[This Memorandum is a departmental production only, and is not an expression of the corporate view of the Governor-General in Council.]

The object of this Memorandum is to provide material for discussion of some of the main financial issues which arise from the structure of federation proposed at the Round Table Conference. Although possible solutions of some of the problems may incidentally be indicated, it is recognised that the major issues will have to be considered from the politieal as well as from the purely financial aspect, while for a final solution of almost all these problems detailed examination by an expert Committee will probably be required after the renewed Round Table Conference has expressed its views on general principles.

PART I.—*Analysis of some of the Budgetary Problems under Federation.*

1. The distinction between "Federal" and "Central" subjects was examined at the Round Table Conference more from the administrative than from the budgetary point of view. It may be inferred, however, that, since the Conference rejected various schemes for separate Legislatures and separate Executives and came down on the side of a single bicameral Legislature and a single Executive with collective responsibility for both "Federal" and "Central" subjects, they intended that there should be a single Consolidated Revenue Fund, into which the proceeds of all taxation wherever imposed would flow and from which all supply would issue, whether required for Federal or for Central Administration (compare Section 81 of the Commonwealth of Australia Constitution Act, 1900, and Section 102 of the British North America Act, 1867). From this it would seem to follow that there would be only a single Budget, and that all taxation proposals would be considered by the Federal Government as a whole.

2. Such an arrangement certainly seems the best adapted to the realities of the situation. Moreover, a consideration of the existing liabilities reveals a special difficulty in the way of effective separation. There are extensive liabilities which have been incurred in the past, the most important of which are the Debt charges and Pensions which are secured (Section 20 of the Government of India Act) on the whole revenues of India. Those revenues include both those which are now contemplated as "Federal" and those which are to be "Central" as well as the revenues of the British Indian Provinces. Whatever formal budgetary distinction might be made, the past liability towards third parties would have to remain a charge upon the whole of the revenues.* In the proposed Federation of all India, if it is intended

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* In this connection reference is invited to the remarks made by Sir B. N. Mitra in the Federal Structure sub-Committee of the Round Table Conference (page 497 of Proceedings of that Committee). He said:—

> "It is necessary for me to point out at this stage that there is one strong objection to this separation of our Budget into a Federal group and a Central group. The loans we have raised in the past in England are, under Acts of Parliament, charged on the revenues of India; and any attempt on our part to earmark certain items of such revenue in future for certain purposes may contravene the provisions of these Acts, and may, indeed, engender suspicion in the minds of investors in this country and react on our credit generally. I think, therefore, that we shall have to keep a combined Budget, treating all the heads as Federal, though the constitution will make clear the extent to which these heads affect the Indian States. This may also constitute a consideration in support of Lord Reading's idea that both the Federal Executive and the Federal Legislature will have to deal with all subjects irrespective of the fact of whether they may concern the States or not."

that new debt and liabilities of the Federal Government are to be secured upon the revenues of the Federal Government only and not upon those of the Units of the Federation, Section 20 of the Government of India Act will require appropriate amendment.

3. The questions at issue, however, require closer analysis if the financial arrangements for the new Federation are to be worked into a practical scheme. The dominant facts of the situation which have to be provided for are:—

(1) that the Federation will include Units which are not part of "British India" and which have their own varying systems of taxation. Their position *vis-à-vis* the existing liabilities incurred by British India in the past will have to be clearly defined;

(2) that certain taxation included in the present Government of India Budget is levied only on the British Indian Provinces, whereas some other taxation falls upon consumers throughout India; and

(3) that provision should be made for surplus revenues of the Federal Government being made over to the members of the Federation. In this connection a distinction will clearly have to be made between the taxation which is collected from the British Indian Provinces only and that which is collected indirectly from all members of the Federation.

4. Before the framework of a financial scheme can be worked out, it is necessary to consider several specific points. These are dealt with in the following paragraphs.

5. *The Public Debt.*—The Round Table Conference recommended that future Federal loans should be Federal and that the existing public debt of India should be Central. As remarked above, such allocation cannot absolve "Federal" revenues from their responsibility to third parties for the existing debt, and, indeed, it is not to be supposed that the Conference intended to suggest that the existing debt should be served only by Income-tax collections. But while preserving the responsibility to third parties, an important distinction will clearly have to be made as between members of the Federation between debt charges which in view of their historical origin might properly be treated as appertaining to British India and those which have to be assumed by the new Federal Government. The nature and extent of this distinction may now be examined.

6. The heading "Debt Charges" in the Government of India's Budget includes three separate sub-heads:—

(1) The interest on ordinary debt;

(2) Interest on other obligations; and

(3) Provision from revenue for reduction or avoidance of debt.

7. Sub-heads (1) and (2) may be considered together.

Interest on ordinary debt.—The figure which appears in the Budget is a net figure after allocation of the interest on debt incurred for Commercial Departments and Provincial Governments, *viz.*:—

(1) Railways.

(2) Posts and Telegraphs.

(3) Irrigation Works (Central).

(4) Salt Works.

(5) Forests.

(6) Security Printing.

(7) Vizagapatam Harbour.

(8) The Provincial Loans Fund.

Interest or other obligations.—This sub-head includes interest on the following items:—

(1) Deposits in Post Office Savings Banks, and Cash Certificates.

(2) Special loans—comprising in the main Funds deposited with Government as endowments of various institutions.

(3) Deposits of Provident Funds, of which the most important are the Railway and General Provident Funds.

(4) Deposits of Service Funds, which consist of the deposits of certain Funds, mostly managed by non-official institutions, which are permitted to bank with Government.

(5) Deposits of certain special Funds such as the Postal Insurance and Life Annuity Fund.

(6) Fixed Deposits of Provincial Governments.

(7) Deposits of balances of the Famine Relief Fund.

(8) Deposits of the Reserve and Depreciation Funds from the Railways and other Commercial Departments or undertakings.

For the purpose of the present analysis no difference need be made between ordinary debt and other obligations. The Government of India have been put in possession of Funds partly by the raising of funded or unfunded or floating debt, and partly by receiving deposits from various institutions, from the public and from Provincial Governments. The Public Debt of India also includes certain liabilities which have not involved the receipt of cash. In regard to certain liabilities incurred in connection with the purchase of formerly Company-owned railways, the Government of India received property instead of money. Others, however, the most important of which are the discount at which various loans have been issued, the liability to the British Government of India's war contribution, and bonuses accrued but undrawn on cash certificates, never in any sense involved the receipt of money or equivalent assets.

8. It has been customary for certain purposes in discussing the debt position of the Government of India to divide it into " productive " and " unproductive." It is more accurate, however, to say that the Government of India has on the one side a general body of Public Debt and on the other certain assets. Some of these assets have been regularly commercialised and are, or will be, revenue producing. Certain of these commercialised assets (*e.g.*, the Railway undertaking) provide sufficient revenue to meet the interest on the corresponding debt, while others (for instance, the Posts and Telegraphs Department) do not at present produce sufficient revenue to meet the whole of the interest charges. Others of the assets are liquid, *i.e.*, they are either in the form of cash or its equivalent, or are capable of early and automatic realisation. There are certain others which may be called fixed assets, which have been acquired partly out of loan funds and partly out of revenue, and which are not revenue producing in any full sense, nor can be regarded as realisable. Lastly, there are the currency reserves and Government's obligations as currency authority, which require special treatment.

Taking all these factors into account it may be stated that the Government of India have a certain margin of liabilities which is uncovered by commercialised or productive assets, which margin may be said to constitute the " unproductive " debt. Or, again, it may be considered that the Government of India have a margin of liabilities entirely uncovered by any assets of any kind, and this balance may be termed " uncovered " debt.

9. In considering the main problem of locating responsibility as between " Federal " and " Central " for the existing Public Debt of India, the matter of primary concern is the destination of the assets. The Federal authority should undoubtedly take over with any particular asset the liabilities of the nature of debt attached to it.

(*a*) *Commercialised and other productive assets.*—There seems no reason why the Federal authority should not take over the whole of the following

commercialised or interest-bearing liquid assets with a corresponding portion of the debt:—

	On 31st March, 1931.
	Rs. crores.
Railways	745·29
Posts and Telegraphs, Central irrigation works, Salt works, Central forests, Opium factory, Lighthouses, Nasik security printing, Vizagapatam harbour	23·41
Provincial loans fund	149·14
Other interest-bearing advances	19·60
Total capital value of these assets	937·44

(*b*) *Liquid assets.*—It is suggested that the Federal Government should also take over the whole of the position of the Government of India, mostly arising out of its functioning as a banker to Provincial Governments and others, as regards the remaining liquid assets on the one side and the corresponding liabilities on the other. It is not possible yet to calculate the amount of these for a date later than 31st March, 1930. On that date, however, these items constituted a net asset, *i.e.*, an excess of assets over liabilities, of Rs. 11,08·54 lakhs.

(*c*) *Fixed assets.*—The Federal authority will succeed to the whole of the buildings and public works of all kinds which are at present the property of the Government of India. The replacement value of these is of course an enormous sum. The greater part of them has been constructed out of revenue. Instead of financing such works from revenue resources, the Government of India would have been justified in the past, following the practice of other countries and even according to the practice pursued generally by Provincial Governments in India, in financing the works from loan funds and correspondingly increasing the revenue available for accumulation in revenue reserves. From such revenue reserves Government could have met subsequent revenue deficits which were in fact met by borrowings and which have therefore gone to swell the margin of "uncovered" debt. The Government of India, however, would be disposed as part of a general scheme of federal finance to consider that no liability attaches to such assets as have been acquired out of revenue in the past, and that these should pass to the Federal authority without any corresponding capital liability.

On the other hand, certain fixed assets have been financed definitely from loan funds and part of the existing public debt was definitely raised for these purposes. The two items in this class are:—

	31st March, 1931.
	Rs. lakhs.
New Delhi	14,68·53
Bombay military lands	2,33·03
TOTAL	17,01·56

It is suggested that as the Federal Government would become the proprietor of these assets, it should assume responsibility for the corresponding liabilities.

(*d*) *Currency reserves.*—The position of the Government of India as currency authority raises complicated issues which will require special and exhaustive treatment. It is necessary for the present purpose to consider that matter only so far as it has reactions on the Public Debt position. The Federal Government would take over the very substantial currency reserves of the Government of India (either direct or through the intermediary of a Central Bank) on the ground that the Government of India have in the past acted as currency authority for practically the whole of India and not merely for British India alone. It would consequently follow that the Federal Government would become a party to the liability side of the currency account.

The existing currency reserves, *viz.*, the Paper Currency Reserve and the Gold Standard Reserve, have been built up in main out of profits earned on the currency. The Gold Standard Reserve was accumulated from profits on silver coinage, and represented roughly the difference between the cost price of silver and the nominal value of it as coin. In recent years silver coin has been returning from circulation in very large quantities, and in order to reduce the holding of such an unproductive asset, some of this silver has been sold. The loss which has had to be faced at the time of selling is taken as the difference between the nominal value of the coin and the sale price of the silver. This loss ought strictly speaking to have been met out of the currency reserves. In fact, this has not been done, and on 31st March, 1931, this element had gone to swell the Public Debt to the extent of Rs. 15,21 lakhs. If this loss had been met out of the existing currency reserves, then the amount of those reserves to be handed over to the Federal authority would have been correspondingly reduced. If the Federal authority takes over the present currency position, it should assume responsibility for the portion of the Public Debt which represents this loss.

There may be at any particular time another liability in the Public Debt of India incurred directly in connection with the currency obligations of the Government of India. This is the amount of the " created " securities in the Paper Currency Reserve other than those created for meeting the loss on the sale of silver. On 31st March, 1931, there was no obligation of this class, but if such an obligation should reappear the party taking on the Government of India's currency position should assume direct responsibility for it.

(*e*) *Other distinguishable items of debt.*—There is another distinguishable item in the " uncovered " debt of India, *viz.*, a sum of about Rs. 25 crores, representing liabilities which the Government of India have had to assume in the form of discounts or during conversion operations. This liability must be regarded as spread over all the purposes which the public debt has served and should be divided between " Federal " and " Central " in proportion to the other interest-bearing liabilities of each. The Federal authority should accordingly take on about Rs. 20 crores of this item.

(*f*) Lastly, the Federal Government would probably have to assume responsibility for Rs. 45·15 lakhs of the existing Public Debt representing the balance of the commuted value of military and railway pensions met from borrowed funds.

10. The approximate liability of the Federal authority (on the figures for 31st March, 1931) in the matter of the Public Debt of India as set out in the preceding paragraphs may now be summarised as follows:—

	Rs. lakhs.
Against commercialised or productive or interest-bearing liquid assets—para. 9 (*a*) . .	937,44·00
Against other liquid net assets—para. 9 (*b*) .	11,08·54
Against fixed assets financed from borrowed money—para. 9 (*c*)	17,01·56

	Rs. lakhs.
Against loss on silver—para. 9 (*d*) . . .	15,21·00
Against other created securities in the Paper Currency Reserve—para. 9 (*d*) . . .	*Nil.*
Share of discount, etc.—para. 9 (*e*) . . .	20,00·00
Balance of commuted value of military and railway pensions—para. 9 (*f*)	45·15
TOTAL .	1,001,20·25

The total interest-bearing Public Debt of India of all kinds may for present purposes be taken at about 1,173,57·70 lakhs. The balance therefore which would remain a Central liability would be Rs. 172,37·45 lakhs.

11. In what has been said so far no distinction has been made between the sterling and rupee portions of the debt of India. The sterling part has for the purposes of present calculations been converted into rupees at the statutory rate of 1*s.* 6*d.* Most of the sterling debt represents in fact liabilities incurred specifically in connection with the Railway undertaking. It would therefore be correct, if any such distinction were made, to regard the main portion of the sterling debt as a railway liability to be assumed direct by the Federal Government. In any case it will make for simplicity if Central's liability to Federal is recognised as a wholly rupee liability.

12. For the balance of interest-bearing debt not covered by commercialised assets, *viz.*, about Rs. 236,13·70 lakhs, the interest charge for 1931-32 is Rs. 11,99 lakhs. "Central" would be responsible for about Rs. 172,37·45 lakhs of this debt, the proportionate interest on which would amount to Rs. 8,77 lakhs. ("Central" would also in the first year of the Federation be responsible for providing about Rs. 1,14 lakhs representing accrued discount during the past year on floating debt.) Against their share, Rs. 3,22 lakhs, of interest charges, Federal would receive about Rs. 1,00 lakhs receipts by way of interest on loans to Indian States and others, which would be included among the assets which they would take over. (*Cf.* para. 21.)

13. It is now possible to consider the allocation of the provision for "Reduction or avoidance of debt." Although in practice this amount has in the past been partly utilised to avoid fresh borrowings, the whole provision is really an annual sinking fund contribution and will hereafter be so described. The Federal Government would in future be responsible for providing an appropriate sinking fund for its portion of the debt, while the "Central" share would have to be separately provided for, or part of the service of the "Central" debt, on the lines proposed below. The total interest-bearing debt on 31st March, 1931, would have been divided as follows:—

	Rs. lakhs.
Federal	1,001,20·25
Central	172,37·45
TOTAL .	1,173,57·70

Assuming that the present basis for calculating the sinking fund contribution will continue to be followed, the amount provided in the 1931-32 budget, *viz.*, Rs. 678,37 lakhs, will have to be split up between Federal and Central. In fact, the calculations leading to this figure recognise some difference between "ordinary debt" and "other obligations," and are based on a total debt figure of Rs. 1,019,72 lakhs on 31st March, 1931. This need not affect the proportionate amounts to be provided by Federal and Central. However, for this purpose, an amount of about Rs. 30 lakhs of expired regular debt

should be added to the central portion of the debt. The amounts may therefore be put at:—

	Rs. lakhs.
Federal	5,78
Central	1,00

14. The arrangement outlined above represents a simple plan. The "Central" portion of the debt would be, at the figure stated, fixed at the time of the inauguration of the constitution and it would progressively diminish each year to the extent of the provision made annually for the reduction of debt. The "Central" debt would not increase by new borrowing to meet new capital expenditure because all new expenditure would be met by the Federal Government. On the other hand, there would be a certain kind of new borrowing in which the Central Government might be held to be interested, *viz.*, in the case of loans issued in conversion of "pre-Federation" loans or to raise funds for their repayment. In such cases it might be argued that the "Federal" and "Central" shares should be allocated according to the proportion of their respective shares in the total Public Debt at the time of the inauguration of the Federal constitution. Such operations might have the effect of increasing the nominal value of the "Central" share of debt, *e.g.*, if money were raised by the issue of 4½ per cent. bonds at 90 in order to pay off an existing loan at par. This would add a considerable complication; and it is suggested that it would be much simpler if the "Central" share in the pre-Federation debt were fixed as a definite capital sum bearing a definite rate of interest at the time of the inauguration of the new constitution, which would be reduced each year as the capital is repaid by the Central share in the Reduction of Debt provision. If this were done the Federal Government would gain if the pre-Federation debt were renewed at a lower rate of interest, and in the contrary case would lose. But the difference would be small, and as the rates for re-borrowing would depend on the credit of the Federal Government it is only fair that they should profit or lose by the result. Such an arrangement would avoid complicated calculations.

The allocation of the capital debt and of debt charges proposed in the preceding paragraphs is summarised in the following table:—

	"Federal."	"Central."	Total.
Capital . . .	1,001,20	172,37	1,173,58
Interest (gross) .	3,22*	8,77	11,99
Less Recovered .	1,00*	—	1,00
Net Interest . .	2,22	8,77	10,99
Sinking Fund . .	5,78	1,00	6,78

The two figures asterisked should each be increased by a sum of about Rs. 40 crores, the recoverable interest on the commercialised debt.

15. *Superannuation allowances and pensions.*—There was no discussion on the subject of pensions at the Round Table Conference. A pension, considered in the light of deferred pay, is a liability, like a provident fund bonus, which arises during the service of an officer. Yet it is the universal practice of Governments not to reserve in advance for a pensionary liability, but to regard a pension as a legitimate charge against the revenues of the future. Consequently any party appropriating a part of future revenues should assume responsibility for a corresponding proportion of the pensionary liability of the past. The present continuing active pension lists may be put at—

	Rs. crores.
Civil (net)	2¼
Military (included in the Army Budget among non-effective charges)	7¾
TOTAL .	10

The exact liability of "Central" revenues for pensions would be a suitable matter for reference to an expert Finance Committee, if one is appointed. For the purpose of this budgetary analysis it is perhaps sufficient to assume that the initial share of "Central" will not exceed the amount of the existing net civil pension list.

16. *The Centrally Administered Areas.*—These areas, consisting of the North-West Frontier Province, Baluchistan, Ajmer-Merwara, the Andamans and Delhi, are for the most part deficit administrations, the deficit on the North-West Frontier Province being very large. There are, however, possibilities of profit, at any rate, in the Andamans where extensive schemes for forest development have recently been undertaken. These areas are no more connected with the major British Indian Provinces than they are with the States, and it seems logical that they should become a "Federal" charge. There are parallels in history, *e.g.*, in the United States, for the existence of "territories" under direct administration of the Federal Authority, and, in fact, the majority of the States in the U.S.A. have passed through this stage, some, such as New Mexico and Texas, having become "States" in comparatively recent times. Again, New Guinea is an almost exact parallel. It is a territory under the Australian Commonwealth, which makes a fixed subsidy of £20,000 annually towards its administration, besides varying subsidies from year to year. In addition to the areas mentioned above, there are a number of smaller areas in Rajputana, Central India, Hyderabad, Bangalore and the Western India States Agency, the receipts and expenses of which come into the Government of India's Budget.* These are all connected with political activities. Coorg again is a minor administration with a separate settlement and constitution. The receipts and expenditure of the administered areas in the 1931-32 Budget (omitting expenditure classed as political and Frontier watch and ward) are as follows:—

	(In lakhs.) Expenditure.	Revenue.
North-West Frontier Province	1,80	85
Baluchistan	46	22
Delhi	47	28
Ajmer-Merwara	19	17
Andamans and Nicobars	46	24
Rajputana	15	4
Central India	14	6
Hyderabad	8	6
Bangalore	14	14
Western India States Agency, etc.	20	8
TOTAL	4,09	2,14

It is to be noted that the figures given above are merely recorded for the purpose of making the financial position clear, and do not convey any implication as to the administrative arrangements which might be made (*e.g.*, particularly in the case of the North-West Frontier Province, for which a reformed constitution is contemplated). The present financial position is some

* It is arguable that the considerations connected with these areas are such that the expenditure on them should be classed as political and therefore as a Reserved item. Somewhat complicated considerations arise in their case, which will require careful examination when the financial details are settled—presumably by an expert committee. The amounts involved, however, are not of sufficient magnitude to affect materially the general picture which we are presenting—whatever may be the ultimate decision as to how expenditure on these areas is to be classed and provided for.

indication as to the measure of financial assistance which may be required for these areas, whatever arrangements may be made for their administration.

17. *Excises on motor spirit, kerosene and silver.*—The Round Table Conference contemplated that the position with regard to these items should "remain as at present," by which they apparently classified them as "Central." But since these taxes are paid by the consumer all over India, in the States as well as in British India, they should be classed as federal sources of revenue, just as much as Customs, with which they are intimately connected.

18. *The revenue and expenditure from the Provincial Road Fund* balance one another and can be omitted for purposes of this budgetary analysis. Under a federal scheme the Road Fund will presumably become a federal fund, and all members of the Federation will get their proportionate share according to consumption of petrol, in accordance with the principle which has been taken as the basis of the existing scheme.

19. *Opium* under the Round Table Conference classification is also "to remain as at present." We have to distinguish "provision" opium which is exported and "excise" opium which is manufactured for the British Indian Provinces. There is no profit connected with the latter since it is sold at cost price. The revenue from the export of opium will disappear before long, in view of the policy of reducing exports annually, except for a few lakhs from the sale of medicinal opium. There are, however, strong reasons for making the subject "Federal," *viz.*, its international importance and also the relations involved with the opium-growing and opium-consuming States.

20. *Audit and Accounts.*—The Round Table Conference contemplated splitting up audit into Federal and Central, and some members wished to make Provincial Audit "provincial." It has always been contemplated that under the new constitution the Provincial Governments will pay for their own accounts (about 40 lakhs in the aggregate). They should pay for audit also (about Rs. 26 lakhs in the aggregate) since the cost of audit depends largely on the elaboration of accounts, though the release of some central revenues may be necessary to make these payments possible. So far as the compilation and audit of the Central Government's accounts is concerned, it is predominantly "Federal" having regard to the important subjects included in the federal sphere, Army, Railways, Posts and Telegraphs, etc., and for present purposes Central Government accounts and audit have been taken as "Federal." The cost amounts to Rs. 40 lakhs in the aggregate.

21. *Interest Receipts.*—This head includes the interest on the Gold Standard Reserve, which has been taken as "Federal," and the payments from Indian States, public bodies or private persons to whom the Government of India have granted loans. The latter payments, amounting to Rs. 1 crore, are receipts on account of part of the allocated debt and may be regarded as an "appropriation in aid" against the federal Debt charges. They have been treated as a deduct entry accordingly from federal's share of interest payments (*vide* para. 12). It should be noted that the Gold Standard Reserve interest will disappear as soon as a Reserve Bank is formed (and the same is true of currency profits), though ultimately some of it should return as part of the Government share in the profits of the Bank. In the early years, however, the Bank will be consolidating its reserves and there are unlikely to be any profits to share with Government.

22. *Extraordinary Receipts.*—These represent the sum received by way of reparations. They should logically be treated as "Central" as some set-off against the unproductive debt incurred in the war period. These receipts would be added to the balance for distribution among the Provinces.

23. *Allocation of other expenditure.*—It is suggested that the whole of the normal expenditure at present incurred by the Government of India ought, under a proposed Federal constitution, to be treated as Federal. If the Federation is a reality, there should be no general administrative expenditure which does not concern the whole of the Federation. Similarly expenditure on scientific departments and scientific research, Indian Stores Department

and civil works should all be regarded as being of all-India interest. Certain special items which occur in the last Budget might perhaps be excluded, as for example, the terminable grants to Benares and Aligarh Universities, because these, so long as they remain, represent merely the completion of a programme for which the Government of India undertook the liability. But when these terminable grants are completed, any new grants of such a nature should be treated as being of all-India interest.

24. On the basis of the considerations advanced in the preceding paragraphs it is possible to formulate a simple plan of which the main features may be stated as follows:—

(i) That there should be a single Federal Budget in which provision should be made for the whole of the charges hitherto incurred by the Government of India (with the exception of Rs. 66 lakhs for Audit and Accounts which would be transferred to the Provinces).

(ii) That in the charges on the Federal Budget a *pro-forma* distinction should be drawn between those which are truly Federal charges, and those which ought fairly to be borne by the taxpayers of British India only. These have been hitherto referred to as "Central," and this expression can conveniently be used. These "Central" charges would be—

(*a*) The service of such portion of the pre-Federation debt as is not taken over, against assets also taken over, by the Federation.

(*b*) A certain portion—to be assessed—of accrued superannuation allowances and pensions.

(*c*) Such other charges, if any, as may eventually be classed as "Central" on the ground that they are incurred solely in the interests of the British Indian Provinces. (As noted below, this classification must be a matter for detailed enquiry. For the present, for the purpose of this preliminary presentation of the case, it is assumed that there will be no charges of this class, and for the reasons stated in para. 23 this represents, theoretically at least, the correct position.)

The suggestion which we have made is that the amount of the charges under (*a*) and (*b*) should be fixed at the time of the inauguration of the Federation. The charges under (*a*) would gradually diminish as the "Central" debt was gradually paid off by the sinking fund.

(iii) The funds to meet these "Central" charges would be provided by the taxpayers of British India by allocating the requisite amount from the proceeds of taxes on Income—this amount being treated as a first charge on such proceeds. This arrangement may be described by saying that British India would provide the Federal authority with a sort of "endowment fund" to meet charges which, although they have to be borne on the Federal Budget, are nevertheless properly attributable to British India.

(iv) Subject to the sums required to meet these "Central" charges, taxes on Income—inasmuch as they would, according to present expectations, only be levied in British India—would not be Federal taxes, and their proceeds would be available for distribution among the Provinces. (For possible methods for such distribution see footnote.*)

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* Various methods would be possible for allowing the Provinces to participate in the taxes on Income. For example, they might be collected up to a rate which would safely cover the amount required to meet the "Central" charge in the Federal Budget—*vide* (iii) on a uniform basis for British India, and beyond this rate each Province might be left free to make surcharges on its own share. Alternatively the taxes on Income as a whole (not merely "personal" Income-tax) might, subject always to the prior charge in favour of the Federal Budget, be dealt with in the manner proposed by Sir Walter Layton for his "Provincial Fund."

Otherwise the *status quo* as regards revenue would be preserved. In connection with Income-tax, however, it is necessary to mention a special feature. The Provinces could have no claim to share in the proceeds of the tax levied in the centrally administered areas, or on officers employed by the Federal or Central Government. These proceeds, although in certain cases some adjustments of detail may be necessary, can properly be regarded as Federal and are so treated in this memorandum. Against this an appropriate share of the collection charges would have to be set off. The gross amount of tax on the present basis is estimated at about 1 crore to be included in "Federal."

(v) The Indian States would also make a contribution to the Federation through their share of indirect federal taxation. In these circumstances naturally no claim would arise on the part of the States for a share in the revenues derived from Customs and Salt under the existing arrangements, which would be applied solely for the general purposes of the Federation.

(vi) As a result of this arrangement the Federal authority would be left to depend on indirect taxes (Customs and Salt) supplemented by Opium Receipts, Profits from commercial undertakings, Currency profits, and certain payments from the Indian States.

(The point must be noted here that it may be argued on behalf of the Indian States that, whereas the tax-payers of British India would under this arrangement be contributing to truly federal expenditure only through indirect taxes, the tax-payers of the Indian States would be contributing not only in this way, but also through direct payments and in certain other ways. This claim, and the possible adjustments which may have to be made to meet it, will be considered later. For the present the picture can be most clearly presented by assuming that the *status quo* as regards these payments will be preserved.)

(vii) There would be no interference by the Federal Government with the internal taxation of the States for their own purposes, any more than with the British Indian Provinces' taxation, within the limits permitted by the constitution; nor would States' revenues be made liable for federal debt, old or new.

25. An attempt may now be made to show how a Budget might work out on these principles, taking the Budget figures of 1931-2 in the first instance:—

Budget, 1931-2 (in lakh of rupees).

Expenditure.	——	Receipts.
	Reserved.	
52,00	Military	..
1,63	Political	..
2,53	Frontier Watch and Ward .	..
,32	Territorial and political pensions	..
,32	Ecclesiastical . . .	..
56,80		..

Expenditure.		Receipts.	
	Unreserved.		
,98	Customs		55,45
1,25	Salt		7,05
,74	Opium		2,16
..	Railway contributions		5,36
..	Payments by Indian States		,74
,98	Posts and Telegraphs		—,49
..	Taxes on Income (Federal offices and in Federal territory)	Gross 1,00 less ,04 collection charges	,96
..	Interest on Gold Standard Reserve		1,92
,51	Currency		,59
,28	Mint		,04
1,68	General administration		..
,40	Audit		..
1,02	Scientific Departments		..
,35	Aviation		..
,08	D.G.I.M.S., &c.		..
,09 (net)	Public Health Commissioner		..
,03	School of Mines		..
,18	Grants to Universities		..
,17 (net)	Agricultural Research, &c.		..
,27 (net)	Emigration, &c.		..
,43	Ports and Pilotage (should balance in long run)		,36
,05 (net)	Indian Stores Department		..
,21 (net)	Stationery and Printing		..
1,02 (net)	Civil Works		..
4,09	Administered areas		2,14
,65	Miscellaneous		,31
2,36	Pensions, &c.	2,36	
10,99	Interest	8,77 Contributions from "Central"	12,13
6,78	Sinking Fund contributions (should balance in long run)	1,00	
35,59			88,72
Total . 92,39		Total .	88,72
	Deficit .		3,67

Expenditure.	—	Receipts.	
	Central.		
	Reparations		,30
,77	Taxes on Income . . .	Proportionate cost of collection recovered from Federal . .	,04
		Collections Gross .	16,45
		Deduct— to Federal .	12,13
		to Provincial Fund . .	3,89
			,77
93,16	GRAND TOTAL .		93,16

NOTE.—The result differs from Budget surplus of 1 because:—

(*a*) 66 has been transferred to Provinces for Accounts and Audit.

(*b*) 8 from General Administration for U. P. scheme of separated accounts.

(*c*) 2 on account of State Prisoners Acts expenditure debited to Provinces (as recommended by Round Table Conference).

(*d*) 55 representing sale proceeds of Indo-European Telegraph Department has been ignored.

(*e*) In addition, the Provincial Fund would have to provide in the first year about Rs. 1,14 lakhs on account of discount accorded on floating debt in the past year.

26. The specimen Budget given in the preceding paragraph is valuable for illustrative purposes, but it is based rather on the past than the future and it is obviously desirable to attempt some estimate of the position which will take account of certain changes and occurrences which must be, according to present discussions, assumed as likely. For this purpose a second illustrative Budget based on a forecast of the position that might be expected in the year 1934-5 has been prepared and is set out in the succeeding paragraph.

The assumptions made in preparing this budget are—

(1) That Burma will be separated (this is dealt with in more detail in the next paragraph);

(2) that a Reserve Bank will have been set up, to which will pass the management of the Currency and the Reserves, thus depriving the Federal Government of these sources of income;

(3) that opium revenue will have disappeared except for 15 lakhs from medicinal opium;

(4) that the "tributes" from Indian States will be retained as a receipt in the Federal Budget (this question is further discussed in a later paragraph);

(5) that the revenue from Customs will have increased as a result of usual expansion by 3 crores, but will be reduced by 5·44 crores owing to the separation of Burma;

(6) that the Posts and Telegraphs Department will be able to work without loss though without profit. The special receipt from sale of the Indo-European Telegraph Department in 1931-2 is, of course, omitted;

(7) that ordinary civil expenditure will remain the same as in 1931-2, except that the expenditure on the census is omitted; and it is assumed that the revenue and expenditure for the Mints will balance, instead of showing a loss as in 1931-2;

(8) that the receipts from Income-tax will not exceed their present figure of about 17 crores net, the assumption being that, if there were a considerable increase under this head, the rates recently imposed would be reduced. We have to allow, however, for 2·30 lakhs of Income-tax receipts going to Burma.

(9) Purely balancing heads, such as Ports and Pilotage and Lighthouses, are omitted;

(10) No credit has been taken for receipts from new Federal Fund taxation;

(11) No attempt has been made to forecast future military expenditure except that a saving of 2 crores has been taken as due to the separation of Burma.

27. With regard to the separation of Burma, the assumptions made have, of course, no authority, but are based on certain preliminary calculations. Briefly, the main assumptions are as follows: Loss of revenue, 5·44 lakhs under Customs, 2,30 lakhs under Income-tax, 35 under Salt, 3 under Reparation receipts (which, otherwise may be taken as having dropped to 27) and 35 under the Railway contribution. The principal reductions in expenditure to set off against this are: under Interest, 1,04 lakhs; reduction and avoidance of debt, 75; Frontier Watch and Ward, 62; Pensions, 26; Customs expenditure, 13; Income-tax Department, 10; Audit, 7; and Scientific Departments, 9. Under Posts and Telegraphs there will be a saving to India of 26 lakhs, but, as stated above, the assumption made is that the Indian Posts and Telegraphs Department's accounts will just balance.

28. The illustrative Budget is then as follows:—

Expenditure.	——	Receipts.
	Reserved.	
50,00 (net)	Military	..
1,60	Political	..
1,91	Frontier Watch and Ward .	..
,31	Territorial and political pensions	..
,30	Ecclesiastical . . .	..
54,12		..

Expenditure.		Receipts.	
	Unreserved.		
,85	Customs		53,01
1,23	Salt		6,70
	Opium		,15
	Railway contribution		5,01
	Payments by Indian States		,74
	Taxes on Income (Federal)	Gross 1,00 less ,04 collection charges	,96
1,68	General administrations		..
,33	Audit		..
,91	Scientific Departments		..
,34	Aviation		..
,18	Grants to Universities		..
,17 (net)	Agricultural Research, etc.		..
,27 (net)	Stationery and Printing		..
,95 (net)	Civil Works		..
4,09 (net)	Administered Areas		2,14
,60	Miscellaneous and other Heads		..
2,10	Pensions, etc.	2,10 Contributions from "Central"	10,62
9,69	Interest	7,71 Contributions from "Central"	10,62
6,04	Sinking Fund Contributions	,81 Contributions from "Central"	10,62
29,43			79,33
Total . 83,55		Total .	79,33
			4,22
	Central.		
	Reparations		,24
,67	Taxes on Income	Proportionate cost of collection recovered from Federal	,04
		Collections gross . 14,15	
		Deduct— to Federal, . 10,62	
		to Provincial Fund . . 3,14	
			,67
84,22	GRAND TOTAL		84,22

NOTE.—The Provincial Fund would have to meet the accrued liability for discount on floating debt for the previous year.

29. Before proceeding to examine the conclusions to be drawn from the two specimen Budgets which have been given, it must be emphasised that these are in a sense of a *pro formâ* character. They are based on estimates which themselves have been based on past experience, and, so far as any forecast has been given in the second Budget, this forecast has assumed normal development of revenue and continuance of the general fiscal policy which has hitherto been followed. An attempt will be made later to consider how the present economic crisis on the one hand, and the possibility on the other hand, of changes in policy, may affect the position, but in the meanwhile an examination of the tables as given may be of value.

30. The main point which emerges from these specimen Budgets is that, as a result of treating Income-tax receipts as available for distribution among the Provinces—subject only to the deduction of a fixed sum to meet "Central" charges—a balance would be released for the benefit of the Provincial revenues while the Federal Budget would be left with a deficit. The sum available for the Provinces—against which it must be remembered that, according to our proposals, they will have taken over a charge of Rs. 66 lakhs for Accounts and Audit—would have been Rs. 4·1 crores on the basis of the 1931-2 Budget and would be Rs. 3·57 crores on the basis of the 1934-5 forecast, while the deficit in the Federal Budget would have been Rs. 3·88 crores on the 1931-2 basis and would be Rs. 5·16 crores on the 1934-5 basis. The deterioration in the latter year is of course due to the anticipated effects of the separation of Burma and to the loss of profits from currency and currency reserves due to the assumed formation of a Reserve Bank.

On the basis of the picture thus presented the chief practical points for consideration must be:—

(1) Whether such a deficit on the Federal Budget could be met.

(2) Whether the result arrived at is really fair to all members of the Federation.

As regards (1), if normal economic conditions can be assumed, it should not be beyond the bounds of possibility to meet such a deficit, partly by retrenchment in expenditure and partly by the imposition of new taxes to be collected from the whole of India, *i.e.*, the sort of taxes which are referred to later under the description of "Federal fund taxes."

As regards (2), there are certain important questions which will have to be discussed when a detailed examination of financial arrangements is made. It must be asked in the first place, "Is it fair that Federal revenues should have to assume liability for the whole of the administrative charges which have hitherto been borne by the Government of India?" This question may be stated in another form as follows: "Will the new entrants into the Federation, *viz.*, the Indian States, have a sufficient interest in the objects of such expenditure to justify their bearing, as members of the Federation, proportionate share in the whole of it?"

This is a question which can hardly be answered according to any *á priori* principles. In order to provide an answer it would be necessary to examine in detail the purposes on which the money under each head is spent. It is clearly an issue on which it will be right to allow the Indian States the fullest hearing and to ensure them an impartial decision. If it is held that any part of the expenditure is so essentially attributable to British India that it cannot be regarded as being properly Federal in character, then the balance could be redressed by allocating a further portion of income-tax receipts to cover such expenditure. An arrangement of this kind would not involve any departure from the form of a unified Federal Budget; but it is suggested that it would really be inconsistent with the true federal spirit to continue such distinctions in the Central Government's expenditure, and it is to be hoped that it would not be necessary to introduce them except possibly as a purely transitory measure.

A second fundamental question which will undoubtedly be raised in the constitutional discussions is whether, according to the plan shown in the specimen Budgets, the burden of finding revenue is fairly distributed among the members of the Federation. On this question it could, as has already been noted, be argued on behalf of the States that whereas the British Indian Provinces would, after Income-tax is removed, only be contributing to Federal expenditure through indirect taxes, the States would be contributing in two ways, first, indirectly through their share in indirect taxes, such as Customs and Salt duties, and secondly, by the direct payments by Indian States, amounting to Rs. 74 lakhs, which actually figure in the specimen Budgets given, and also by other methods which do not figure in the Budgets, *e.g.*, the present value of territories ceded, or capital payments made in the past, or the cost of the maintenance of State Forces which are available for Imperial purposes. As against this line of argument various considerations could be adduced from the British Indian side, as, for example, the value of the public works and other property which, according to the plan proposed in an earlier paragraph, would be taken over by the Federal authority without any corresponding share of debt. Here again the rejoinder from the States might be that they have contributed through indirect taxation in the past towards the resources from which these public works and property were acquired. However, no attempt will be made to set out in full here the arguments and counter arguments which might be advanced. This again is a subject on which the interests both of British India and the States must be ensured a fair hearing and an impartial adjudication. If as a result it is held that, according to the plan indicated in our specimen Budget, the burden would be unevenly distributed as between the Provinces and the States, then a proper balance could be restored in either one of two ways, either by appropriating in aid of Federal revenues an adequate portion of the Income-tax receipts to represent a burden on the British Indian Provinces proportionate to that borne by the States, or by relieving the States of their special burdens, *i.e.*, discontinuing their direct payments and compensating them for the contributions made in other ways.

It may be assumed that if an adjustment is considered necessary, the pressure from the side of the States will be for the adoption of the latter method. This would, however, still further increase the deficit on the Federal Budget, and thereby, perhaps, make it impossible to start the new Federal Government on a sound financial basis. It would therefore undoubtedly be preferable that any adjustment made should, if possible, take the form of continuing the payments by the States on the existing basis, and balancing them by taking a proportionate contribution from Income-tax levied in British India. It is, however, useless to disguise the fact that such an arrangement would not meet the claims of the States individually concerned, and that although it might be fair as between British India on the one side and the whole body of the States on the other, it could not be defended as an equitable solution of the grievances which the particular States in question entertain. For the contributions to which these proposed adjustments relate are not made by the States as a whole but by individual States and in widely varying proportions to their resources. Only three or four States have ceded territory in the past as the price of protection—about 47 States maintain forces recognised as being of actual or potential value for the defence of India, though in some cases the number of troops is exceedingly small. More than 200 States pay tributes and subventions, varying from small amounts representing a minute fraction of their annual revenue to the Mysore subvention of 24½ lakhs, which is locally regarded as a crushing burden on internal development and progress.

31. No attempt will be made in this memorandum to estimate precisely what the value of these claims of the States might be, but a few general observations on each class of claim may be of interest. An attempt is being made to estimate the present net value of the ceded territories. The results

are not yet available, but, from the progress made, it appears that, if compensation to the States concerned were to be limited to any ascertained genuine surplus from provincial sources of revenue, the financial consequences to federal revenues would not be disastrous.

Tributes, or " payments by Indian States " as shown in the foregoing specimen Budget, amount to 74 lakhs of rupees, but about 5 lakhs of them could continue to be demanded in any case as representing payment for tangible assets which are still in the hands of the States concerned. The loss from discontinuing genuine tributary payments would thus not exceed 70 lakhs and might be considerably further reduced if it were found possible to accept a suggestion made below. It has further to be remarked that the objections of States to continuance of these payments would not be based solely on the plea of their being supplementary to the ordinary scale of contribution by federal Units. There is the equally cogent plea that these payments denote relations of a feudal character and that the States will admit no such relationship between themselves and the Federal Government.

The annual cost of the forces maintained under the " reorganisation scheme " which replaced the system of Imperial Service Troops is in the neighbourhood of 2½ crores of rupees. But the maintenance of such forces is voluntary, and as it seems impracticable to meet any claim by the States on such a scale under the scheme of Federal finance envisaged in this memorandum, the only possible solutions appear to be (*a*) to make corresponding reduction in the Federal Army expenditure accompanied by such measures as might be considered necessary to enhance the efficiency and reliability of these States Forces, or (*b*) to inform the States concerned that, as the maintenance of the forces in question is in no way obligatory on them or essential to the defence requirements of India, it is impossible to take them into consideration for purposes of federal finance. It might, however, be necessary to make some departures from the general principle in the case of State Forces to which definite and important functions have been assigned under the existing dispositions of the General Staff.

On the other hand there are numerous instances in which States would not, unless existing arrangements were altered, be making their contributions to federal resources on the same full basis as other federal Units. This fact arises out of the favourable position occupied by maritime States and Kashmir in regard to customs duties and also from the varying degrees of immunity from the salt tax which States capable of producing salt in their territories enjoy under agreements concluded in the past with the Government of India. There could, in fact, under the scheme of federal finance outlined above, be only two classes of " deficit units " in the Federation. The first class would be the minor British Indian Provinces, which would have, for one reason or another, to be subsidised from federal revenues. The second would be the States who do not contribute on the same basis as other Units through customs duties or the salt tax. So far as the " minor Provinces " are concerned the charging of a deficit to Federal Provinces can in the most important cases be justified on special military and political grounds (*e.g.*, especially North-West Frontier Province and Baluchistan). But as regards the States it is obviously desirable that these deficiencies should be remedied by any practical means that can be devised. One method, which might in practice go a long way towards solving this problem, would be to set off against each other the two contrasting sets of claims. That is to say, the failure of a State to contribute its proper quota under customs or salt might be regarded as redeemed, *pro tanto*, by the present value of the contributions, financial, military or territorial, which it makes, or has made, and which are not expected of other federal Units. Even tributes might be utilised for adjustments of this nature, if all suspicion of feudal relationship between the State and the Federal Government could be avoided. They might continue to be payable to the Crown, which would assign them to the Federal Government as a matter of grace. It may well be

that along these lines the Federal Structure Committee will discern an equitable solution of the greater part of this difficult problem, and could adopt principles the detailed application of which might be left to some tribunal which would command the confidence of all concerned.

Whatever solution may be finally adopted it is reasonable that account should be taken of the practical requirements of the Federal Government. If substantial adjustments in favour of any State had to be made in full immediately on the inauguration of the Federal Constitution, the financial position of the Federal Government might be unduly strained. If, therefore, an adjustment has to be made it might be arranged that the process of adjustment should be spread over an appropriate period of years so as to give the Federal authority a chance to build up its financial position.

It is believed that it is only by the methods indicated above, *i.e.*, by offering to States a fair settlement based on the special circumstances of individual cases, that several States of the first importance could be attracted into the Federation. Moreover, it would otherwise be impossible to say to States with financial grievances that Federation is the only remedy for such grievances. Such a reply would be unjustified unless the terms of federation admit of reasonable adjustments of equitable claims, and, if adjustments are not made as a part of the terms of entry into federation, it is possible that they may nevertheless eventually have to be made in some other way no less embarrassing to the federal finances.

32. The points which have been referred to in the preceding paragraph are obviously matters for discussion at the Conference and eventually for detailed examination as part of a thorough financial enquiry. It suffices for our present purpose to have called attention to the main issues for adjustment. In the meanwhile it is felt that it ought to be possible to provide a practical scheme which is consistent with the general idea advanced in the first two paragraphs of this memorandum, *viz.*, the elimination of any distinction between Federal and Central finance, involving separate funds, separate budgets and consequent allocation.

33. The scheme as explained up to this point would leave the Federal authority practically dependent for meeting its expenditure on revenue from:—

(*a*) Customs.

(*b*) Salt.

(*c*) Opium (a disappearing item).

(*d*) Surplus profits, after meeting interest charges, of commercial undertakings.

(*e*) The Government's share in the Reserve Bank profits.

(*f*) Contributions from States.

Items (*c*), (*d*) and (*e*) are doubtful items, and in any case not of major importance. Item (*f*) is debatable for special reasons dealt with in the immediately preceding paragraphs. The result would be that almost entire reliance would be placed on revenue from Customs and Salt. Quite apart from the general considerations affecting the future prospects of customs duties which are dealt with later, it is clear that this plan of taxation is of a restricted and rigid nature and that there is no margin of elasticity.

On this ground it will be necessary to look for new sources of revenue to provide the necessary margin of financial strength to the Federal authority. It must be accepted as probable that if the plan of Federal finance involved demanding from the Indian States any surrender of their existing sources of revenue, it would be unlikely that such a plan would command general consent. It is therefore important to devise new sources of revenue which could be tapped without interfering with the existing systems of States' finance. Such sources might be found in certain articles of general consumption such as matches and possibly tobacco, either by the imposition of excise duties or vend fees, or by the establishment of some form of federal

monopoly. It is suggested that a "Federal Fund" might be created in this way, the taxes or profits collected from the consumption of such articles being collected centrally and distributed to all members of the Federation *per capita*, unless required for balancing the Federal Budget. Many of the Indian States, however, already tax tobacco and for this reason if may be found necessary to make taxation of tobacco a source of provincial revenue. Salt also might be treated as a Federal Fund tax, and if the growth of federal revenues from Customs or a reduction in expenditure rendered this possible, it could gradually be distributed to all members of the Federation in the same way.

A special difficulty in providing for elasticity arises from the fact that the other main source of taxation—Income-tax—will not, unless there is a change in the policy of the Indian States, be applicable to the whole of India. If it were not for this difficulty an obvious way of providing elasticity for the Federal Government would be to give that Government powers to levy a surcharge on taxes on income. It might, of course, be provided that this should be done as between the Federal authority and the British Indian Provinces, and that proportionate contributions should be levied from the States on some other basis acceptable to them, though this would introduce a serious lack of uniformity in the arrangements. It should be mentioned that at present Rule 19 of the Devolution Rules permits the levy of a contribution from any Local Government in case of emergency with the sanction of and subject to the conditions approved by the Secretary of State.

One further matter may be referred to here as illustrating the need for retaining in the Constitution some elasticity for the Federal Government's finances. It has been indicated in a separate memorandum that following the development of policy in many other countries, it may be found desirable in the future for the Federal Government to assume powers of control over the major road systems of the country and to finance their construction and maintenance. In that event it might be necessary to provide that all forms of taxation of the motor trade (some of which are now provincial) should be available to the Federal Government.

The method by which Federal Fund taxes should be divided among the units of the Federation would also require consideration. The paramount necessity for elasticity for the finances of the Federal Government, having in view the importance of the interests which depend upon it, would indicate that the conclusion must be (*a*) that Federal Fund taxes should primarily and unconditionally be at the disposal of the Federal Government; (*b*) that the proceeds of such taxes should only become available for the units of the Federation when the Federal Government is satisfied that it can make a permanent surrender of the whole or a portion of the proceeds of such taxes.

34. It has already been pointed out that the analysis made in the specimen Budgets set out in the preceding paragraphs is in a sense of a *pro formâ* character, being based on past experience rather than on future probabilities. It has been directed mainly to one object—the illustration of the possibilities of a unitary Budget. In order to provide an estimate which is more in touch with realities, it is necessary to take into account two factors:—

(*a*) The present economic crisis and the slump in prices for all agricultural products.

(*b*) The possibility of change in fiscal policy and the operation of causes which may affect customs revenue—particularly the development of a protective effect in the case of certain of the existing customs duties.

35. As regards (*a*), to the extent that the fall in prices is permanent, *e.g.*, if it is necessary to assume, a price level which is perhaps lower and certainly not higher than the pre-war level, it will be necessary to recast the prevailing ideas as to the present financial position of the Government of India. This, however, is a necessity of which account would have to be

taken in any case. It has nothing to do with the forths coming constitutional change, nor has it any special connection with the idea of Federation. It indicates a problem which the Government of India would have to face, and is not a problem of Federal finance as such. A fall in normal revenue, due to a fall in the value of India's production and purchasing power, would normally have to be met either by the development of new sources of taxation or by retrenchment in expenditure. According to present indications it would appear prudent to make provision for a permanent fall in revenue, and it will be for the Government of India to devise permanent measures for meeting it. Before the time comes for the discussion of a practical financial plan it will be necessary to furnish carefully prepared estimates of the revenue and expenditure to be expected in the opening years of the new constitution. No attempt will be made to do this in the present memorandum, but a supplementary note will be forwarded when the revenue results of the first four months of the current year are available. In the meanwhile a general review of the past development and future prospects of the two main heads, Customs and Income-tax, have been prepared by the Central Board of Revenue and are attached as Appendices to this memorandum.

36. As regards (*b*), it is clearly necessary in planning a scheme of Federal finance to take into account the possibility that under the new constitution fiscal policy may assume an aspect of more drastic and less discriminating protection. Apart from this, it is also necessary to take into account that certain major elements in the present customs revenue may become of decreasing importance owing to the protective effects of the duties on which they depend. Notable instances of this are the import duties on sugar (estimated to produce over Rs. 11 crores in the present Budget) and the import duties on cotton priece-goods. It is possible that developments affecting existing taxes and the intensification of protective policy might seriously upset the balance of the existing fiscal system, *e.g.*, customs revenue might decline while income-tax receipts might correspondingly increase. In this connection it cannot be ignored that, as has already been pointed out, the reluctance of the Indian States to come into line with British India as regards Income-tax may prove a hampering factor in the future development of Federal finance in India. In other words, in order to provide a properly balanced system of finance for the Federal Government, it would appear on principle desirable that the Federal Government should be able to rely to some extent at least on the expanding possibilities of sources of direct taxation such as Income-tax.

37. It is not profitable at this stage to do more than call attention to this last-mentioned factor, and as has already been indicated, no attempt will be made in this memorandum to translate into figures the adjustments which may be necessary to meet the possible changes referred to under (*a*) and (*b*) above. What can be said at present reduces itself to the following general statements.

As regards (*a*), it will be necessary for the Government of India by some means or other to adjust its present expenditure to the probable future level of the existing sources of taxation, which, according to our proposals, are to form the mainstay of Federal revenue. If this is not done the Federal authority cannot be set up on a sound foundation, nor could the Indian States be expected willingly to join the Federation.

As regards (*b*), it will be for the new Federal authority to regulate its policy according to the need for providing a balanced Budget. If, for example, protective import duties on a prohibitive scale are imposed on articles the import of which has in the past provided an important source of revenue, it will be necessary for the Federal authority to provide revenue from other sources.

The point which stands out from the above reflections is the necessity, to which attention has already been called, for the Federal authority to have some elasticity as regards sources of revenue. In fact, it seems clear

that it would be unwise to adopt any form of constitution which would permanently fix the financial basis for the Federation in a rigid and restricted way. Time may bring about a change of opinion in the States about various forms of revenue, and necessity may enforce great changes in policy. Some provision for review of the distribution of sources of revenue appears necessary. For the immediate future we have made certain suggestions as regards such sources in a proposal for the creation of "Federal fund" taxes." Whether it would be possible to add to these such forms of taxation as death duties must be a matter for consideration. It would appear necessary that these questions should receive closer consideration in the detailed financial enquiry which should follow the settlement of a general constitutional plan. It is of the greatest importance that these matters should be examined in a realistic way, so that all parties may understand what are likely to be the necessities of the future.

38. We have already referred to another possible factor which may affect the financial position of a future Federal authority, namely, the claims to financial adjustments by the Indian States.

In making that reference we have dealt principally with one class of claims only, *viz.*, the claims to adjustments in respect of direct payments and other consideration given by certain States as a result of past treaties.

There are, however, claims and matters for adjustment in other fields also.

It is not within the scope of this memorandum to discuss in detail these various issues. But, inasmuch as they must be adjusted before the financial position of the Federal authority can accurately be gauged, it is necessary to make some reference to them.

Generally speaking, on behalf of British India it can be argued that, whatever might be the claims to a favourable adjustment of individual States, the position hitherto has not been one in which on balance the Indian States have contributed more than what is a fair equivalent for the benefits which they have received, or, in other words, that the taxpayers of British India as a whole have not been relieved at the cost of burdens inequitably imposed upon the States as a whole. But it is obviously necessary that the special claims and grievances of the States should receive fair examination as a preliminary to the constitution of a Federal authority or to the relinquishment by the British Government of any part of the responsibility or fiduciary position which it has hitherto held in relation to the States. On the other hand, it is to be hoped that the States will reciprocate by taking a fair and broadminded view of the position.

For the purpose of any examination of the claims of Indian States it is suggested that a distinction must be drawn between the following different classes of claims:—

(*a*) Individual claims of certain maritime States to specially favourable arrangements in connection with which a difference of opinion between the Government of India and the State concerned exists as to the proper interpretation of existing treaties and arrangements (*e.g.*, the case of Nawanagar and Baroda).

It is suggested that these disputes should be settled independently of the constitutional discussion and prior to any constitutional change in the Government of India.

(*b*) The claims of those States which in one form or another (Tribute, ceded territories, &c.) now make contributions to the Government of India. It is suggested that the *general position* as regards these claims must be considered in the constitutional discussions, though arrangements might be made for their decision by some sort of independent arbitral tribunal.

(*c*) The general position of the maritime States and Kashmir in relation to their contribution to Federal expenditure.

(*d*) The general position of States which enjoy some measure of immunity in regard to the Indian Salt Tax.

It is suggested that (*c*) and (*d*) must be reviewed and adjusted as part of the constitutional discussions at the Round Table Conference.

(*e*) The general claim of the States to a share in indirect revenues such as Customs and Salt receipts, and to participate in any profits accruing from Railways, Coinage and Currency and Posts and Telegraphs.

It is suggested that this claim has become merged in the Federal issue.

As regards (*c*), the very peculiar position of the maritime States has already been before the Federal Structure Sub-Committee. The specimen Budgets which we have given above are drawn up on the basis of a continuance of the existing arrangements, *i.e.*, that the maritime States retain (*a*) customs duties on goods imported for consumption in their own territories and (*b*) also in certain cases a share of the duty on goods passing into British India. While existing treaties cannot be ignored, it would of course be illogical to allow the maritime States to enter the Federation and still retain both (*a*) and (*b*) for their own purposes without making a fair contribution in other ways to Federal revenues.

39. The conclusions suggested by the considerations set out in the preceding paragraphs may perhaps be stated shortly as follows:—

There appears to be no reason why a sound system of Federal finance, commanding the general agreement of all possible parties to the Federation, should not be devised provided that—

First, the necessary adjustments referred to under (*a*) in para. 34 are definitely made.

Secondly, that the Indian States are not called upon, as a consequence of joining the Federation, to sacrifice any of their previous sources of revenue in order to balance the Federal Budget.

Thirdly, that the Indian States are prepared to deal in a fair and broad-minded way with the settlement of issues arising out of existing treaties.

Fourthly, that a reasonable agreement is reached as to what will be available as "Federal Fund taxes" so as to provide an adequate margin of elasticity to the revenues of the Federal authority.

PART II.—*Some Subsidiary Financial Questions.*

40. *Powers of taxation.*—One of the most important questions which arises in any scheme for federal finance is the determination of the respective powers of taxation of the Central Government and the Units of the Federation. At present the Provincial Governments in British India have powers of taxation in connection with matters classified as "Provincial," subject, however, to the provisions of the Scheduled Taxes Rules. Those Rules specify in two schedules the matters in respect of which Local Governments and local bodies may legislate for taxation purposes without previous sanction of the Governor-General, the consequence being that in all other matters previous sanction is required. Furthermore, No. 47 of the list of Central subjects in Schedule I to Rule 3 of the Devolution Rules classifies as "Central" "all other matters not included among Provincial subjects under Part II of the Schedule." The net result is that at present the residuary powers of taxation rest with the Central Government, and apart from certain matters specified by Statutory Rule, the Local Governments' powers of legislation for taxation purposes are subject to the previous sanction of the Governor-General. In the Government of India's Despatch on Constitutional Reforms it was assumed that the residuary powers of taxation would continue to be Central, but if a Federation is formed which brings in new members, the Indian States,

which have independent powers of taxation within their own territories, the Round Table Conference will no doubt re-examine the question in the light of the new developments in prospect.

If the decision of the Conference were to be that in these circumstances the residuary powers of taxation should belong to the Units of the Federation, the list of subjects reserved as sources of revenue to the Federal Government would presumably be specified in the Constitution. In that event, so far as financial arrangements are concerned, there would be no need of any separate list of "Provincial" subjects, and all that need be specified in the Constitution would be the scope and powers of the Federal Government. Several practical points would, however, arise, particularly the question of what control, if any, should be exercised by the Federal Government. The position of the Indian States will inevitably differ in certain respects from that of the Provinces. Many of the States, for instance, already impose customs duties on their frontiers; others impose Income-tax, but neither of these forms of taxation is universal among the States. Now although it may be theoretically desirable that there should be no internal customs barriers between members of the Federation, and that Income-tax should be levied at uniform rates throughout the Federation, it must be recognised that such an ideal arrangement could not be brought about without the voluntary co-operation of the Indian States, and that, while maritime customs and land customs on the frontiers of India* would become Federal sources of revenue, internal customs duties could still be imposed by the States under their independent powers. It would, however, be a retrograde step to allow the British Indian Provinces to impose customs duties on their frontiers, which would have the effect of hampering internal trade and of prejudicing the Federal revenues from maritime customs. It appears desirable therefore that the Federal Government should have powers of control over the British Indian Provinces to prevent the introduction of such a policy. A second form of control—in some respects analogous to that just mentioned—which it appears desirable to retain for the Federal Government is that over Provincial or Local taxation mainly in connection with terminal taxes or octroi for the purpose of safeguarding (*a*) Federal sources of taxation, and (*b*) international obligations. Similar control should be retained over taxation in Indian States, provided that it does not infringe powers which they exercise at present. A third restriction might be added on the powers of Indian States, Provincial Governments, or local bodies to impose any taxation on property belonging to the Federal Government (*cf.* Section 125 of the Canadian Act of 1867 and Section 114 of the Australian Act of 1900).

The above suggestions indicate the nature of the control which it might be necessary to retain even if the residuary powers of taxation were conferred upon the units of the Federation, the object being to give to the Provinces and to local bodies as free a hand as possible in taxation subject to a few overriding principles. The position *vis-à-vis* the States raises political issues which the Conference will no doubt consider.

The necessity, however, of securing sufficient elasticity to the finances of the Federal Government, which has been discussed in para. 33, has of course a most important bearing upon the question whether the grant of residuary powers to the Units of the Federation is practicable or desirable.

41. *Position of the Provinces.*—Certain special points arise in connection with the position of the Provinces before the unqualified introduction of a scheme such as has been outlined in the first part of this memorandum could be accepted. While the present economic depression and the sensational fall in the prices of agricultural products has created serious financial embarrassment for all the Provinces, the degree of embarrass-

* Subject in each case to such special adjustments as may perhaps be made with maritime States and Kashmir.

ment varies and difficulties of some have become extreme. The latest information, which has been obtained after discussion with representatives of all the Provinces, is being communicated separately and it will be one of the matters for consideration whether a special Committee of Enquiry is necessary to suggest preliminary adjustments in order that all the Provinces may start on their new career with a fair chance. Apart, however, from this major question of a general adjustment, the following special matters will require examination:—

(1) The Finance Department have suggested in the memorandum on classification of subjects that the logical development as regards the audit and account of Provincial transactions is that they should become Provincial. This view is not inconsistent with a gradual development and with practical arangements which might be made provisionally or even permanently in agreement with the Provinces by which in substance the existing arrangement will continue, but it does mean that the Provinces will pay for the cost of their own accounts and audit. At present this is a Central liability, but it is important to create a direct interest on the part of the Provinces in this work, even if the whole continues to be organised by the Central authority as at present. This will be achieved when they have to take over the cost. Such a transfer will throw upon the Provinces an increased liability of about 66 lakhs, and in the present state of their finances it is hardly possible to expect them to meet this addition to their charges.

It was proposed in Sir Walter Layton's scheme that an adjustment should be made between the Centre and the Provinces in respect of the duty on imported foreign liquor in excess of 30 per cent. and commercial stamps, the Central Government surrendering the former, estimated to produce about 1½ crores of revenue, and taking over the latter, which should yield an equivalent amount. The Government of India pointed out in their Despatch on Constitutional Reforms that, while the total revenues from these two sources were roughly equal, so that the interchange was a matter of indifference to the Central Government, the case was by no means the same for individual Provinces, as the receipts in any particular Province from the two sources might vary widely. An alternative suggestion would be that if the Provinces take over the liability for accounts and audit, they should retain the proceeds of commercial stamps. The arrangemens for the duty on imported foreign liquor can be considered independently as a purely administrative matter. Considered as such, there is much to be said for an arrangement of the nature proposed by Sir W. Layton which followed the Government of India's own suggestion. The details, however, are complicated and are still under examination with the Provinces. The matter is of little constitutional importance, but, if, as is hoped, a satisfactory scheme can be worked out, some additional financial help might be provided in this way for the Provinces as a set-off against the liability for accounts and audit.

(2) In para. 62 of the Government of India's Despatch on Constitutional Reforms, it was pointed out that the Provinces at present receive under Devolution Rule 15 a share (at three pies in the rupee) of the tax upon new incomes brought under assessment in any year as compared with the basic year 1920-1. Under this arrangement, which was intended to benefit the industrial Provinces, the most unexpected results have occurred (see the Table printed on page 60 of the Government of India's Despatch). Bengal and Bombay have received nothing: whereas Burma, Assam, Madras, and Bihar have received considerable and increasing sums. The practical difficulty in merely wiping out this arrangement and starting with a clean sheet is that for small Provinces the loss of this revenue, if not compensated by any immediate distribution of Income-tax, would be a serious matter, and so far as Assam is concerned would completely dislocate her finances. If there is to be no general readjustment and so far as possible the *status quo* is to be adopted, it might be the best plan to continue the assignments as on the last year (or last three-year period)

before the date of Federation, until they are absorbed in the release of Income-tax by the Centre to the Provinces.

(3) A decision will have to be arrived at as regards the proportions in which the various Provinces will share in the Income-tax surrendered. Sir Walter Layton's proposals contemplated only the surrender of "personal income-tax," and the proportions in which the Provinces would share in a distribution on this basis are given approximately in para. 66 of the Government of India's Despatch on Constitutional Reforms. On the whole it appears best to adhere to this basis of distribution for dealing with any share of the taxes on income which is likely to be available for relinquishment to the Provinces. The amount so available will for many years to come represent only a minor proportion of the total revenue from this source, since the existing liabilities for pre-Federation unallocated debt and pensions will only gradually diminish; that is to say, it will be very many years before the amount which is available for distribution will be more than the amount calculated on the basis of personal Income-tax. While this basis of distribution is suggested, it is considered that this is a matter on which the Provinces should be given an opportunity for expressing their views, and if a special financial committee is to be appointed this question might be specifically referred to such committee.

In dealing with this subject it is necessary to point out that the distinction between "personal" Income-tax and general Income-tax is in a sense misleading. Strictly speaking, all income may in the end become personal income, and the whole of the taxes, which are now, under the Indian system, included as taxes on income, may become "personal income-taxes" with the sole exception of the Super-tax payable by companies, which is really a corporation tax. Apart from this, the difference in any year between the total taxes on income and that amount which can be regarded as personal Income-tax in India would represent the tax on the undistributed profits of companies and on that portion of the profits which is distributed to persons not liable to Indian Income-tax, but from which tax nevertheless is deducted at source. When the position is fully analysed in this way it appears that rather too much was made of the distinction in Sir Walter Layton's proposals. Moreover, if too great reliance is placed on this distinction for working out a practical scheme for distribution as between the Centre and the Provinces it may lead to really embarrassing results. Thus, for example, it might happen that in some particular year the total body of companies in India might retain undistributed a very large proportion of their profits earned in that particular year and transfer these to reserve, and that then in a subsequent year when profits were low, substantial dividends might be paid from these reserves. In such a case, if the scheme of distribution were an allocation of personal taxes on income to the Provinces and of the balance of taxes on income collected to the Centre, the Central authority would in the earlier year, in the hypothetical instance given, have retained a large share of the tax, while in the later year it might have to distribute to the Provinces as their share in "personal" Income-tax a larger amount than was actually earned in that year, so that the Centre itself might be actually out of pocket. Nevertheless, as affording a rough and ready basis for distribution among the Provinces, the classification of part of the taxes collected in any year as "personal income-tax" is one of value.

42. *Borrowing by the Units of the Federation.*—The borrowing of Provincial Governments at present is governed by Section 30 (1) (A) of the Government of India Act and the Local Government Borrowing Rules made under this Section and by Devolution Rule 25 regulating advances by the Government of India to Local Governments. The actual practice and the terms on which advances are ordinarily given by the Central Government to Local Governments have been set forth in the rules governing the Provincial Loans Fund, which have received the approval of the Secretary of State in Council, and have, therefore, to some extent limited the fuller powers which the Government of India enjoyed under Devolution Rule 25.

The position regarding the Indian States is set forth in the Government of India, Foreign and Political Department Resolution No. F. 170 R. 29, dated the 20th May 1930, the relevant portions of which are given below:—

"(1) It is very desirable in the interests of the Government of India and in its own interests that a State intending to issue a public loan should give information beforehand of its intention to do so, in order to give the Government of India an opportunity of offering friendly advice on the subject, if necessary. This will not apply to the case of short loans for temporary purposes only from banks recognised for this purpose by the Government of India.

"(2) European British subjects are already legally forbidden to make loans to Ruling Princes and Chiefs without the previous consent in writing of the Secretary of State in Council or of the Governor-General in Council or of a Local Government. The previous concurrence of the Government of India is required by States entering into loan transactions with alien persons or firms. The term 'alien' is not applicable to British Indian subjects or subjects of other Indian States.

"(3) Loans by one State to another require the consent of the Government of India."

The Indian States, therefore, have the right to issue public loans in India without the sanction of the Government of India, but they cannot issue external loans without the sanction of the Secretary of State. The Provincial Governments, however, have to obtain the sanction of the Governor-General in Council for loans raised in India and of the Secretary of State for loans raised outside India.

The position which will arise after Federation raises important political as well as financial issues which will need full discussion at the Conference and further examination in detail by a special Finance Committee. They can only be lightly touched on here.

The position was fully dealt with in the Report of the Statutory Commission (Vol. II, paras. 189 and 311) and in the Government of India Despatch on proposals for Constitutional Reforms (paras. 54 and 68).

The views expressed in the latter need no modification in substance. It is merely necessary to consider whether they have in any respect to be modified or expanded having regard to—

(*a*) the plan of responsibility at the Centre;

(*b*) recent experience;

(*c*) the plan for an all-India Federation to include the Indian States.

Some account is taken of these questions in the following remarks, which are not intended to be exhaustive and must be read together with the fuller examination contained in the passages from the Statutory Commission's Report and the Government of India Despatch to which reference has been made above.

(1) *Co-ordination of borrowing.*—The very great importance of this, in the general interests of the Federation, was emphasised in the passages referred to. In the absence of such co-ordination the public issues of the Units and of the Federal Government might not be regulated so as to obtain the required Funds at the lowest possible rate of interest and the burden of the debt charges of the Federation as a whole might become unnecessarily increased. As the loan operations of the Federal Government will be on a much larger scale and of much greater importance than those of the Units it is only reasonable that some powers of control should be reserved to the Federal Government. The powers statutorily given to the Federal Government could take the shape of prefectly general control, but in practice such control should be limited to safeguarding the credit of the Federation. A possible arrangement would be to have a set of standard regulations, similar to the present Local Government Borrowing Rules,

which would lay down the purposes for which units of the Federation might ordinarily borrow, and provided that the declared purpose was within the scope of these Regulations, the grant or refusal of sanction should be decided on considerations of the general monetary and credit situation and of the general financial policy and position of the Federal Unit concerned. In order that the Federal Units might be in a position to meet without difficulty or delay a temporary shortage of funds, they could take ways and means advances from the Reserve Bank and the Imperial Bank of India without obtaining the previous sanction of the Federal Government.

(2) Past experience has shown that the Provincial Governments can usually borrow more cheaply by taking loans from the Provincial Loans Fund than by floating their own public loans, and in recent years it has become the normal method for the Central Government to undertake all public borrowing and to distribute a part of its borrowings to the Provinces. The experience of these years, and of the last year in particular, has, however, indicated certain real dangers which are inherent in this system. The present position of several of the Provinces shows that, if a Provincial Government is running at a deficit, the Central Government is practically forced to finance such a deficit. Though the Central Government could refuse to finance a deficit permanently from the Provincial Loans Fund and insist on a Provincial Government borrowing directly from the public such a line of action has never actually been taken. It is essential that if borrowing by the Provincial Governments from the Provincial Loans Fund is to continue it should be less automatic and that refusal of loans from the Fund should not be regarded as exceptional. It is important that Provincial Governments should be made to feel their own responsibilities, and nothing will bring the realities of responsibility home to them so much as a loss of credit which makes it impossible for them to borrow on their own account. Some alteration is therefore called for in the present system.

(3) In considering a practical scheme it must be remembered that the greater the control exercised by the Federal Government over borrowing by the Units of the Federation, the stronger would be the implication that the Units can look to the Federal Government to help them through difficulties. There are dangers in carrying the tutelary rôle too far.

Taking into account these conflicting considerations, it is suggested that, on balance, co-ordination of loan policy should, at least at the outset, be regarded as of major importance, but that restriction on the Provinces' freedom to borrow on their own credit should not be pushed to extremes. An arrangement containing the following features is put forward for consideration:—

(*a*) A retention of general power to control and co-ordinate Provincial borrowing by the Federal Government.

(*b*) A continuance of arrangements on the lines of the existing Provincial Loans Fund—but with a tightening of control. For example—

(*i*) if a Province has to take a loan to finance a deficit, no further loan from the Provincial Loans Fund should be made until the "deficit loan" has been repaid;

(*ii*) there should be some scrutiny of the general financial position of a Province applying for a loan, and loans should be refused if that position is unsatisfactory.

(*c*) The ultimate power to decide whether a loan is to be granted to rest with the Finance Minister of the Government of India working with a Board of Loan Commissioners. (*Cf.* para. 68 of the Government of India Despatch, page 69. The fact the Finance portfolio in the Central Government is, according to the conference plan, to be held by a responsible Finance Minister may modify the views of the Provincial Governments as recorded on pages 69 and 70 of the Government of India Despatch, and strengthens the reasons for the immediate appointment of a Board of Loans Commissioners.)

(*d*) All Provinces to keep their own balances independently with the Reserve Bank. (See below, para. 43.)

(*e*) All Provinces taking advantage of the Provincial Loans Fund arrangements to submit their accounts to an audit by the Auditor-General of India. This need not be more than a light test audit, sufficient to satisfy the Auditor-General—

(*i*) that the accounts are kept in a form sufficient to exhibit the true financial position;

(*ii*) that they are accurately kept.

It is not impossible that in the working of such arrangements a definite conflict might arise betwen the Finance Minister and a particular Province. It would then be open to such a Province to withdraw from the Provincial Loans Fund arrangements and stand on its own credit. But even after this the Provinces would still have to abide by some general regulations regarding borrowing.

As regards the Indian States, it is not possible at present to suggest more than that they should be allowed to become voluntary adherents to the Provincial Loans Fund arrangements, in which case they would submit to all regulations applicable to the Provinces. If they find that it pays them to borrow through the Provincial Loans Fund, they may be expected to submit to the closer regulations and supervision which would be a condition of their adherence.

43. *Balances of the Federal units.*—In para. 69 of their Despatch on Constitutional Reforms, the Government of India accepted the recommendations of the Indian Statutory Commission that any change in the present arrangements might be postponed until a Central Bank is created and that the Government of India should perform the service of banker for the Provincial Governments on a commercial basis and should not attempt to make undue profits out of the business. The Conference will no doubt consider whether the prospect of Federation requires that this question should be re-examined.

The Indian States, of course, keep their own balances. Under a Federal system comprising both Indian States and the Provincial Governments, it might be held undesirable for the Federal Government to perform the service of banker for some Units of the Federation while leaving other Units to make their own arrangements. The only Funds available for financing the ways and means of the Units would be Federal and objection might be raised to the employment of Federal Funds for financing the operations of certain Units only, even though arrangements might be made so that the Federal Government would make a reasonable profit out of the business. Moreover, the maintenance of separate balances by all the Units of the Federation would undoubtedly tend to increase the sense of financial responsibility of the Units, as the necessity for finding the actual cash to finance their administration would at once bring home to the Units the effects of their financial policy. On principle, therefore, there is much to be said for the maintenance of a separate cash balance by each Unit of the Federation. A scheme for the separation of the Provincial balances was drawn up in 1924, and it may be said that the separation could be effected without any serious administrative difficulty. The most important argument against separation is that it would be more expensive as the total amount of money lying idle would obviously be considerably larger than at present.

44. *Other points.*—On the assumption that the Lower House will be the House in which expenditure is voted and taxation initiated, it will clearly have to be fully representative of the Federation. A point to be discussed is whether the whole House will vote on all the expenditure and all proposals for taxation, or whether a "Committee" of the House representing the British Indian Provinces only will vote on "Central" expenditure and taxation Bills affecting British Indian Provinces only. This point was touched on in the Round Table Conference discussions and is referred to in

the quotation from Sir B. N. Mitra given in the footnote to para. 2, but the small content of the subjects which from the Budgetary point of view can be classified as Central makes the point of perhaps less importance than it was assumed to be then. Since the debt and pension liabilities are of a contractual character, there will, in fact, be very little "votable" central expenditure except the cost of the Income-tax Department, nor any money bills except those imposing Income-tax. Considerable emphasis was, moreover, laid at the Conference upon the united responsibility of the Federal Executive for all purposes, because all sections of the Federation would inevitably be concerned in the possible defeat of the Government on any of their proposals. In such an extreme instance the members of the House representing the States could not wholly stand aside. Although therefore it would be possible to devise arrangements by which portions of the House would sit in Committee to deal with matters of British Indian concern, this, it is suggested, could hardly take the form of a rigid constitutional provision and might, if found really necessary or desirable, be dealt with by convention.

45. One other matter may be referred to in conclusion. The present arrangement by which the duty on salt, the maximum postal rates and the rates of Income-tax and Super-tax are voted annually in the Finance Bill in addition to any items of new taxation in respect of customs might perhaps be reconsidered. After these rates have been voted once by the new Legislature, it may be held that an annual Finance Bill is unnecessary unless there is to be some change in the existing rates of taxation.

APPENDIX II.

MEMORANDUM ON THE PRINCIPLES OF FEDERAL FINANCE PREPARED FOR THE LORD CHANCELLOR.

(This Memorandum is not in any sense an expression of the views of Government.)

I.—*Amalgamation of Federal and Central Finance.*

1. One of the provisional decisions reached at the Conference was that future Federal loans should be Federal, and that the existing Public Debt should be Central. It is doubtful, however, whether it would be practicable to give effect to this recommendation, as, apart from the fact that Central revenues would not be sufficient to cover the service of the existing debt, it is clear that such portion of the debt as is covered by assets that may be taken over by the Federal Government should be treated as Federal. The Government of India have made a careful analysis of the Public Debt (sterling and rupee), which amounts to 1,173,57·70 lakhs, and on the assumption that the Federal Government should take over with any particular asset the liabilities attached to that asset, and should also assume debt liability under certain other heads (loss on silver, share of discount and balance of commuted pensions), it is calculated that the interest-bearing debt which should be shouldered by the Federation amounts to 1,001,20·25 lakhs, the balance of 172,37·45 lakhs remaining a Central liability. On this basis it is suggested in the Government of India's memorandum that there should be a single Federal Budget in which a *pro forma* distinction should be made between Federal and Central charges, the latter to include the service of the debt allocated to Central, a portion of accrued superannuation allowances and pensions, as well as any other charges (to be determined) eventually classed as Central. These items would form a first charge on the Income-tax receipts of British India, the balance of which would be distributed to the Provinces. One feature of the scheme is that, as no Central debt will be incurred in the feature, and as an annual provision for debt reduction would be made, the Central debt would in course of time disappear.

2. It may be asked why, having gone so far, we should not go a step further and break down completely the distinction between Federal and Central finance? If this could be done, and if amalgamation could be effected without prejudicing the interests of any member of the Federation, not only would there be an immense gain in simplification, but important political results might follow. The Federation would stand for India and a possible source of friction in the future between British India and the States would be removed, for so long as the distinction between Federal and Central receipts remains, a conflict of interests is bound to arise when it becomes a question of imposing additional taxation or of reducing existing taxation. Further, so long as there is a distinction between Federal and Central finance it would, in practice, scarcely be possible for a State subject to become Finance Minister.

3. *Income-tax.*—An initial difficulty standing in the way of amalgamation lies in the fact that Income-tax is collected in British India only. Assuming, as we may, that income-tax legislation should be passed by the Federal Legislature, and that the tax should be collected by Federal agency, it is suggested that the whole of the net proceeds should at once be credited to the Provinces, the distribution to be made on a basis to be determined, even though as part of the financial settlements to be made between the Federal Government and the Provinces these proceeds, wholly or in part, were returned in the form of contributions to the Federal Government to enable that Government to meet its obligations. If this were done, Income-tax, except collections from Federal officers, would no longer be a Central receipt and one of the obstacles to the amalgamation of Federal and Central finance would be removed. If, however, the States, while maintaining the immunity of State subjects from a personal Income-tax, would agree to the imposition of a Corporation tax it would be possible, as a variant of this plan, to credit the proceeds of such a tax to Federal revenues, the rest being credited to the Provinces. A Corporation tax would be a growing head of revenue, and as it is highly desirable that Federal revenues should be as elastic as possible, this alternative is attractive, if the Princes would consent.

4. *The Public Debt.*—Another difficulty in the way of amalgamation arises in respect of the Public Debt. It is, however, suggested that the assumption by the Federation of responsibility for the existing debt would not prejudice the interests of the States and would involve no new obligation on State revenues. The debt is now charged on the "revenues of India" and these, under Section 20 (3) of the Government of India Act, include "all the territorial and other revenues of or arising in British India." As matters stand, therefore, State revenues form no part of the security, and it is desirable to make it clear that there is no intention of charging existing or future debts on these revenues. This could be done by defining in the new Constitution the "revenues of India," on which the existing debt would be charged, as including the revenues of the Federation as well as the revenues of British India.

5. If the whole of the existing debt be secured in this way the second obstacle to amalgamation would be removed. In so far as the burden on the Provinces is concerned, there is no essential difference between a system under which a portion of the existing debt would be described as Central, the amount required for the service of that debt being a first charge on Income-tax receipts (the rest going to the Provinces) and a system under which the whole Income-tax receipts would be credited to the Provinces, a portion being returned, in the form of contributions, to enable the Federal Government to balance its Budget.

6. As regards future debt, this might be charged on Federal revenues only and not on the revenues of India, but it is highly undesirable, in the interests of the Federation, that this should be done, as if any distinction be made in this respect between the security for existing and for future debts, or if the revenues on which future debts are charged be less than the revenues on which existing debts are charged, suspicion may arise in the

minds of investors both in India and abroad and future borrowing may be prejudiced.

7. It may be urged on behalf of British India that if Provincial revenues are to form part of the security for the future Public Debt of India, the internal revenues of the State members of the Federation should also form part of that security. Theoretically there may be some justification for this view, but it is to be hoped that it will not be pressed. After all, it is possible to exaggerate the importance of this question of security. The holder of Government paper is not in the position of the holder of a mortgage, who, in case of default, can obtain possession of the property on which his loan is secured. India has never yet been compelled—and, it is hoped, never will be compelled—to hypothecate as security for a loan a specific head of revenue, an outside receiver being appointed for the purpose. Although loans are legally charged on the revenues of India, the real security is the credit of the country, and this, in the future as in the past, will be judged, not by the amount of revenue collected, but by the extent to which Government consistently observes the canons of sound finance in presenting truly balanced Budgets, in avoiding excessive borrowing or borrowing for improper purposes, and in managing the currency on sound lines.

8. *Contributions from the Indian States.*—The contributions now made by certain States is a third obstacle standing in the way of amalgamation, although the amount involved is not considerable. These payments, which are available for the general expenditure of the Government of India, have hitherto been called Tributes, but this year it was decided to discontinue the use of this expression.

9. These contributions amount in the aggregate to more than Rs. 70 lakhs annually, and are now made by no less than 218 States. They range from Rs. 24,50,000 in the case of Mysore to Rs. 3 in the case of Ranasan, and they differ widely in origin, some being Tributes in the true sense of the word, others payments in lieu of the obligation to supply troops, while some are in the nature of quit rents or compensation for surrendered revenue.

10. The ideal course would be to abolish these contributions, but as matters stand the financial prospects of the Federation are so uncertain that this is difficult. Possibly at the outset the States concerned, if satisfied that the abolition of the contributions was not at present feasible, might agree that these payments should be directly credited to Federal revenues if, in return, they were assured, first, that should financial conditions then permit those contributions not earmarked for specific purposes would be abolished when the Federation was established, and secondly, that if this was found to be impossible, Federal surpluses should be used for the reduction and ultimate extinction of these payments. As Indian revenues respond very rapidly to an improvement in world conditions an assurance of this kind would be of great practical value. It will be remembered that after the introduction of the Reforms, which involved heavy contributions from the Provinces, it was the declared policy of Government to afford relief to the Provinces from Central surpluses, and that in pursuance of this policy Provincial contributions were finally extinguished a few years ago.

11. Should a solution on these lines not be accepted it will be necessary to devise some plan which while avoiding the treatment of these contributions as direct Federal receipts, would enable them to be used for general purposes.

12. If Income-tax, the Public Debt and contributions from States should be dealt with in the manner suggested above, the way would be clear for the complete amalgamation of Federal and Central finance.

II.—*Taxation.*

13. Under the Scheduled Taxes Rules a Provincial Legislature may, without previous sanction, impose any of the taxes listed in Schedule I for

the purposes of the Local Government, and may authorise any local authority to impose any of the taxes or tolls listed in Schedule II. Otherwise the previous sanction of the Government of India must be obtained.

14. An arrangement of this nature, even if the lists were considerably enlarged, would not be consistent with the conception of Provincial autonomy, and it would not be possible to provide that the previous sanction of the Federal Government to the imposition of any Provincial tax should be required. Should, therefore, any dispute arise in the future between the Federal and a Provincial Government as to the authority to impose any particular form of taxation, the matter could not be settled by an order of the Federal Government, but presumably would have to be referred to the Federal Court. That Court, however, could only adjudicate on the basis of a written constitution, and for this reason it is essential that the provisions embodied in the constitution should, so far as practicable, be precise and comprehensive.

15. The nature of these provisions might suitably form the subject of expert enquiry, and one of three alternatives might be adopted. The powers of the Federal Government might be limited to a number of specific taxes, the power to impose all other forms of taxation resting with the Provinces, but this, in view of the desirability of securing elasticity in the Federal revenues, is not recommended; secondly, all forms of taxation, existing and possible, might be classified in two lists; or, thirdly, a division of authority on more general lines might be laid down, the Federal Government being empowered to impose indirect taxation only, with certain specified exceptions, and the Provincial Governments being empowered to impose all forms of direct taxation and specified forms of indirect taxation. In all the circumstances the third alternative seems the best, but as economists differ as to what is a direct and what an indirect tax this plan may be found to be impracticable. But whether the second or the third alternative be adopted it would be necessary to provide for residuary powers. In this sphere it would seem appropriate that residuary powers should rest with the Federal Government, but if the political objections to this course be found to be insuperable, a possible solution (always provided that the third alternative is found to be practicable) would be to distinguish between residuary powers in regard to indirect and in regard to direct taxation, leaving the former with the Federal and the latter with the Provincial Governments.

16. In regard to the directly administered areas in British India which might be brought under the direct control of the Federal Government, it would seem to be sufficient to regulate powers of taxation by rules on the lines of the existing Scheduled Taxes Rules.

17. It is clear that the Federal Legislature cannot trench on the powers of the States in regard to direct taxation, and it is desirable that these should be explicitly stated. But a difficulty arises if any new form of indirect taxation—such as a Tobacco Excise—be imposed by the Federal Legislature, if in any of the States the tax is already levied. It would be unreasonable that a single State member of the Federation should be in a position to block a proposal of this kind, and it is desirable, therefore, to provide that the State tax should be replaced by the Federal tax on payment of suitable compensation.

18. But whatever powers of taxation be enjoyed by the units of the Federation, these powers should be subject to the overriding condition that they shall not be exercised—

(*a*) so as to conflict with international obligations undertaken by the Federal Government in commercial treaties or international Conventions;

(*b*) against the interest of the Federation as a whole;

(*c*) so as to affect injuriously any head of Federal revenue; and

(*d*) to tax the property of the Federal Government.

19. The limitation of powers under (*a*) would, of course, cover obligations inherited by the Federal Government. If the Federal Government desired to assume new obligations which might trench on the powers of the Provincial Governments and the States, it is an open question whether such obligations could be assumed only after the consent of Provincial Governments and the States had been obtained, or whether the Federal Government should be empowered to enter into commercial treaties or ratify international Conventions without such consent. This raises an important political issue which the Conference may have to consider separately.

20. The outstanding example under (*b*) is the imposition of internal customs duties, as this is the very negation of federation. Those inland States which at present levy customs duties cannot be expected to surrender this source of revenue without compensation, but so far as can be foreseen it would not be practicable to pay compensation in all cases, as the Federation would not be able to face the loss of revenue which this would involve.

21. As regards (*c*), no Unit of the Federation should be permitted, without the consent of the Federal Government, to levy a railway terminal tax on passengers or goods, as this might seriously affect railway revenues.

22. Condition (*d*) is based on the Canadian and Australian Acts and can scarcely be objected to. The immunity of Federal property from local taxation would extend to rates and cesses imposed by local authorities.

III.—*Financial Relations with the States.*

23. As the Federal Legislature will be precluded from imposing any form of direct taxation in the States, the contributions which a State entering the Federation will make to Federal revenues will be limited to the proceeds of indirect taxation. New forms of indirect taxation of general application, such as the Tobacco Excise, may be imposed in the future, but as matters stand States would only contribute under the heads of Customs (including the kerosene and petrol excises) and Salt. As, however, the maritime States themselves collect and retain customs duties, such States would contribute nothing under this head, while the broad effect of the network of agreements concluded with those States which are capable of producing salt is that the non-producing States alone would contribute to the Salt revenues.

24. But in any case there can, it is suggested, be no doubt that if a State enters the Federation, the claim of that State to a share in the customs and Salt revenue is automatically extinguished. A number of difficult problems, especially in regard to contributions, maintenance of State forces and ceded territories, remain unsolved. If the States concerned agreed that their contributions should be dealt with in the manner suggested in Part II of these Notes the position would be greatly eased, but it is highly undesirable that the Federal Government should in the early years be required to deal with these matters. A prolonged enquiry into such claims and counter-claims might accentuate the cleavage between British India and the States and so militate against the best interests of the Federation.

25. In these circumstances, it is suggested that an attempt should be made to secure the assent of the Princes to a moratorium of 10 years. During that period claims and counter-claims would remain in abeyance. In this connection that portion of the Government of India's general memorandum on Federal finance which deals with the important question of the incidence of burdens as between British India and the States should be read. If the difficulty regarding contributions be overcome as already suggested, and if also in the case of the maritime States a settlement can be reached, it is to be hoped that, for the rest, claims and counter-claims might be allowed to lie dormant for 10 years.

26. *The Maritime States.*—There is also the difficult and complicated problem of the maritime States. We are not here concerned with the purely administrative question whether, if a maritime State entered the Federation, collection should be entrusted to Federal or to State agency, or whether,

if State agency be conitnued, this should be subject to Federal inspection or control, but with the question whether, on the financial side, the Conference can in any way assist in the solution of the problem. It is highly desirable that collections should be credited to Federal revenues, but if this be done compensation may have to be paid to each State. Clearly the Conference cannot enter into the merits of the dispute now pending between the Government of India and certain States, nor can it attempt to assess the amount of compensation payable in individual cases. The most that can be done is to endeavour to secure assent to the general principles that collection shall be credited to Federal revenues and that the claim of each State for compensation should be impartially settled.

IV.—*Borrowing and Balances.*

27. The nature of the arrangements to be made regarding Provincial borrowing depends upon the degree of financial independence that will be enjoyed by Provincial Governments, and this is a political issue of first importance.

28. We are not here concerned with Provincial independence on the administrative side, but if in the sphere of finance it be held that the Provincial Governments should be completely independent, that no power of intervention for the purpose of securing financial stability should be vested in the Governor, the Governor-General or the Federal Government, and that the Federal Government has no interest in or responsibility for a financial breakdown (a contingecy which it would be foolish to ignore), then clearly the Provincial Government must be left free to borrow as it pleases in the open market.

29. On the other hand, the view may be held that if Provincial contributions figure in the scheme of Federal finance the solvency of a Province is a matter of direct interest to the Federal Government. Further, as the financial breakdown of a Province could not fail to affect the credit of the Federal Government, both in India and abroad, and so prejudice Federal borrowing, there can be little doubt that the Federal Government, whatever its constitutional responsibilities may be, would, in practice, have to come to the assistance of a bankrupt Province. Seeing, therefore, that excessive borrowing or borrowing for improper purposes must inevitably create an unsound financial position, some control over Provincial borrowing should rest with the Federal Government.

30. But whether or not the Provinical Governments be subject to Federal control in the issue of Federal loans, it is desirable, in the general interests of the Federation, that a Federal Loans Fund should be established, as if borrowing be co-ordinated competition in the markets is avoided and money obtained on more favourable terms. As, however, the Fund would be fed from Federal resources the Federal Government should be free to grant or withhold advances at its discretion, and if advances be made to impose such terms and conditions as it considers suitable. In this manner a real, though indirect, control over Provincial finance would be secured.

31. Until a Reserve Bank is established, it seems desirable that the Federal Government of India should continue to perform the service of banker for the Provincial Governments on a commercial basis and that Provincial balances should remain with the Federal Government.

V.—*Resources.*

32. There remains the important practical question whether the resources of the Federation and of the Provincial Governments will be sufficient to meet necessary expenditure and what financial adjustments should be made so that, so far as is practicable, the Federation and each Province shall start on an even keel. The Budgets of the current year, both Central and Provincial, have been so completely falsified, and the future is so uncertain that it will be exceedingly difficult to frame estimates of any value. The revenues of British India, Central and Provincial, have been seriously

affected, not only by the world economic crisis, but also by political unrest; drastic retrenchments and additional taxation are probable, and the possible creation of three new Governor's Provinces has to be taken into account. In these circumstances no useful purpose would be served by asking the Conference to consider this aspect of the problem. All that can be done is to entrust the work to an expert Committee which, in consultation with the Government of India and Provincial Governments, would, on the best material available, attempt to forecast the receipts and expenditure of the Federal and Provincial Governments and propose financial adjustments.

APPENDIX III.

NOTE ON AN INDIAN FEDERAL COURT CIRCULATED BY THE CHAIRMAN.

1. In a Constitution created by the Federation of a number of separate political Units and providing for the distribution of powers between a central Legislature and Executive on one hand and the Legislatures and Executives of the Federal Units on the other, a Federal Court appears to be an essential element. Such a Court is needed to interpret Federal laws and compel obedience to them, and more particularly to interpret the Federal Constitution itself. The delimitation of the respectives spheres of the Federal and the Provincial and State authorities, whether Legislative or Executive will be most conveniently entrusted to a Tribunal independent both of the Central, Provincial and State Governments, and it would in any event be required in order to prevent the mischief which might otherwise arise if the various High Courts and State Courts interpreted the Constitution in different senses, and thus made the law uncertain and ambiguous.

2. A Federal Court may exercise either an original or an appellate jurisdiction, or both. The jurisdiction which it exercises may be exclusive or shared with other courts. This jurisdiction may be confined to Federal matters alone or it may be exercised in whole or in part over other matters concurrently with Courts of the Federal Units. The Constitutions of the United States, of Canada and of Australia respectively show clearly that there is no universal type of Federal Tribunal.

3. The United States Constitution vests the judicial power of the United States (as distinct from that of the individual States) in one Supreme Court and in such inferior Courts as Congress may from time to time ordain and establish. Thus, the only Court actually created by the Constitution itself was the Supreme Court; but Congress has since created two (formerly three) categories of lower Federal Courts, *viz.*, District Courts and Circuit Courts of Appeals. The British North America Act, 1867, enacts that the Dominion Parliament may from time to time provide for the constitution, maintenance and organisation of a general Court of Appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada; and under this power a Canadian Supreme Court was created in 1875. The Commonwealth of Australia Constitution Act, 1900, vests the judicial power of the Commonwealth in a Federal Supreme Court, to be called the High Court of Australia, and in any such other Federal Courts as the Commonwealth Parliament may create and in such other Courts as it may invest with Federal jurisdiction.

4. In the United States, the Federal Courts exercise an exclusive jurisdiction in all cases arising under the Constitution and under Federal Statutes, and in certain other cases specified in the Constitution itself. They constitute a hierarchy of Courts which covers the whole country and is wholly separate from and independent of the State Courts. In Canada the same Courts deal both with Federal and Provincial matters, and an appeal lies to the Supreme Court from all other Courts. The Australian system

stands midway between these two extremes. The High Court exercises, or can be empowered to exercise, an original jurisdiction in certain specified matters, including matters arising under the Constitution or involving its interpretation, and the Commonwealth Parliament is empowered not only to invest a State Court with an original Federal jurisdiction and to define that jurisdiction, but also to define the extent to which the jurisdiction of any Federal Court shall be exclusive of that which belongs or is invested in the State Courts. These matters are now dealt with by the Judiciary Act, 1903, passed under the above powers, but it is to be observed that a further Act of 1907 gave to the Federal Courts an exclusive jurisdiction in matters relating to the constitutional rights and powers of the Commonwealth and of the Sates *inter se*. The High Court also has an appellate jurisdiction in the case of appeals from any Federal Court or other Court exercising Federal jurisdiction and also from any State Court from which at the establishment of the Commonwealth an appeal lay to the Judicial Committee of the Privy Council. Generally speaking, therefore, the Australian High Court exercises an appellate jurisdiction both in Federal and in other matters, and it exercises an original jurisdiction in Federal matters concurrently with the State Courts, subject to the right of the Commonwealth Parliament to make the Federal jurisdiction, to such extent as the Statute may provide, an exclusive one.

5. The existence in India of a number of High Courts, most of them long established and all enjoying a high prestige, and the difficulty of setting up special Federal Courts in any but a few of the largest States, would seem (apart from any other consideration) to preclude any system based upon the United States model, *i.e.*, a hierarchy of Federal Courts, both of first instance and of appeal, dealing exclusively with Federal matters and with a Federal Supreme Court at their head. On the other hand, the adoption of the Canadian system which would involve the establishment of an Indian Supreme Court to which an appeal lay in all matters, whether Federal or not, from all other Indian Courts, both High Courts and State Courts, appears to be open to certain objections In the first place, in so litigious a country as India, a flood of appeals might overwhelm the Court at the outset of its career and detract its attention from its true function, that of interpreting the Constitution itself and laying down rules which may serve to guide the natural process of constitutional development. Secondly, it seems improbable that the States would be willing to concede a right of appeal from the State Courts on other than Federal matters to a Supreme Court which would necessarily have its seat in British India; and a Federal Supreme Court with an appellate jurisdiction of this kind limited to a portion only of the Federation might, by emphasing the difference in status between two main component elements of the Federation, have the appearance of an instrument of division rather than of union. It is understood, however, that there is a strong demand for a Supreme Appellate Tribunal for British India, and it might be possible, if so desired, for the Federal Court to be enabled to sit for this purpose under another style and title; or possibly it might sit in two divisions, one to hear Federal appeals and the other British-Indian appeals in non-Federal matters.

6. On the assumption then that there will be only a single Federal Court, with a jurisdiction confined to Federal matters, the choice would lie between (1) giving the High Courts, or other specified Courts, in British India and the corresponding State Courts in the States an original jurisdiction in all, or practically all, Federal matters with a direct or ultimate right of appeal to the Federal Court, and (2), following the Australian model, giving the Federal Court an original jurisdiction in Federal matters, with power, however, to the Federal Legislature, if it should later on think fit, to invest the British Indian Courts and the corresponding State Courts with a Federal jurisdiction (with a right of appeal to the Federal Court), and to define the extent to which the jurisdiction so vested in any Court shall be exclusive of that which belongs to or is vested in those other Courts. On practical grounds the first alternative appears to be by far the more convenient, but

it would seem necessary as a corollary to provide that all appeals in British India in Federal matters shall go to the Federal Court instead of to the Privy Council, in order to obviate the difficulty which at one time arose in Australia, when on important issues the Privy Council and the Australian High Court gave conflicting judgments, according as an appeal has gone to one or the other tribunal. It is a matter for consideration whether there should be a right of appeal from the Federal Court to the Privy Council, or whether in any matter affecting the interpretation of the Constitution itself, the decision of the Supreme Court, as in practice in Australia, should be final. The question of the protection of minorities does not, however, arise in Australia, and the precedent of Canada, where the question is still a vital one, seems to point to the necessity for retaining the Privy Council's jurisdiction.

7. The above suggestions contemplate a Federal Court exercising in general only an appellate jurisdiction in Federal matters, both from the British Indian Courts and from the corresponding State Courts. There are, however, a certain number of subjects with regard to which it would be necessary to consider whether the Federal Court should not also possess an original jurisdiction. Among the matters in which the Australian High Court has or has been given by the Commonwealth Parliament an original jurisdiction are those (1) arising under any Treaty; (2) affecting Consuls or other representatives of other countries; (3) in which the Commonwealth is a party; (4) between States, or between residents of different States, or between a State and a resident of another State; (5) in which a Writ of Mandamus or prohibition or an Injunction is sought against an officer of the Commonwealth; (6) arising under Admiralty or maritime jurisdiction; and (7) relating to the same subject-matter claimed under the laws of different States. These are not dissimilar to those matters which are within the exclusive jurisdiction of the Federal Courts of the United States; but in Australia, the State Courts have a concurrent jurisdiction with regard to them, save in so far as the Commonwealth Parliament has excluded that jurisdiction by virtue of powers reserved to it by the Constitution. Whether or not it might be desirable to reserve an analogous power in the future to the Indian Federal Legislature, it seems clear that no good reason exists for depriving the British-Indian Courts or the Courts of the States of original jurisdiction in any of the above matters (with perhaps one exception) when they arise in the Federal sphere, subject always to the right of appeal to the Federal Court. The one exception which will require consideration is that of disputes in Federal matters between the Federal Units themselves or between the Federation as a whole and one of the Federal Units. Presumably the Provinces of British India will, with their increased autonomy and their position as Units in the Federation, become invested with a juristic personality and able to sue or be sued by some form of legal process. It would seem also a necessary consequence of federation that in disputes between Province and State in Federal matters the Princes would have to submit in some sense or other to the jurisdiction of a Federal judiciary, just as they will have to concede a right of appeal in Federal matters from the Courts of their States.

8. For disputes such as those mentioned above (*i.e.*, between Federation, State and Province *inter se*) neither existing British-Indian Courts nor State Courts would be an appropriate or indeed a possible tribunal. It can scarcely be doubted that such disputes will from time to time arise, and it seems necessary that they should be cognizable only in the Federal Court itself. Difficulties may well occur in this connection with the States, but should not be insuperable, at any rate so far as regards disputes between State and Province. More difficult problems, however, are likely to arise in relation to the decision of disputes between the Federation itself and one of the States.

9. By the "Federal matters" over which the Federal Court would have jurisdiction is meant all cases arising under the Federal Constitution or under Federal laws, and such other cases as may be regarded as proper to

be determined by such a tribunal. It would include the interpretation of the Constitution, and as a necessary consequence implies a jurisdiction to declare any law passed by the Federal Legislature or the law-making body of any Federal Unit to be *ultra vires*. This is inevitable in the case of any Constitution providing for a distribution of powers between different Legislatures; but if the retention in part of the existing machinery in British India which so commended itself to the Statutory Commission, whereby the prior assent of the Governor-General to Provincial legislation operates over a wide field to prevent questions of *ultra vires* arising, were acceptable to British-Indian opinion the difficulty might, in British India at any rate, be confined within a reasonably small compass. In the States it will have to be faced.

10. The constitution of the Court would have to be settled later. It would presumably have a Chief Justice for its president, with (say) four puisne judges; but the number would depend upon the ultimate extent of the Court's jurisdiction, if any, in non-Federal matters. The number might be fixed by the Constitution with a power to the Federal Legislature to increase it subsequently. It would seem that the appointments to the Court should rest with the Crown. The functions of the Court will be of such supreme importance to the new Federation, especially in its early days, that nothing could safely be omitted which might tend to increase its prestige or reputation for absolute impartiality. It is thought that the Constitution would have to provide that the judges of the Federal Court held office during good behaviour and with adequate safeguards for their independence. The High Court judges in British India at present hold during pleasure, but if they are in future to be appointed otherwise than by the Secretary of State, it seems clear that this tenure will have to be altered.

11. Since it is contemplated in this note that the jurisdiction of the Federal Court will be practically all appellate, the question of the manner in which its judgments will be enforced need cause none of the difficulties which might arise in the case of an original jurisdiction. The Federal Court will either uphold or reverse the decision of a lower Court and the case will then be remitted to the latter to be finally disposed of. In the event of the Federal Court being invested with an original jurisdiction in cases between Province and Province, or Province and State, it ought not to be assumed that the Government of the Province or State would ever make default in implementing a judgment rendered, even though execution could not issue against it; but if so unlikely a thing should happen, it is assumed that the Federal Government or, in the last resort, the Viceroy would have to take action to compel obedience.

APPENDIX IV.

NOTE ON EXPORT DUTIES BY SIR PROVASH CHUNDER MITTER.

Both in my opening speech and also in my speech when dealing with the Report of the Finance sub-Committee I suggested that export duties should not form a source of Federal revenue, at any rate as a permanent item in the Constitution. As this point was not specifically dealt with in the Report of the Finance sub-Committee, and as the point is not only of supreme importance to my Province, but also a point of great general importance, I desire to record the following Note from which it will appear that this head of revenue means practically a taxation on Bengal only.

In the year 1929-30 the total amount realised from export duties was as follows:—

	Rs. (lakhs).	*Rs. (lakhs).*
Hides and Skins	...	35·35
Jute—		
(*a*) Raw	197·22	...
(*b*) Manufactured . . .	266·45	463·67
Rice	...	116·91 (Mostly Burma).

The export duty of 116·91 lakhs of rupees from rice being mostly from Burma, after the separation of that Province the collections on that head will cease to be of importance for Federal India. After such separation the total income from export duties will be 499·2 lakhs of rupees, out of which Bengal jute will contribute 463·67 lakhs of rupees, or over 92 per cent. Bengal is also concerned with the export duty on hides, and skins, and rice, but as I have already observed, the income from these commodities after the separation of Burma will be very small.

In this connection I would refer to a short history of the export duty on jute. This export duty was for the first time imposed with effect from 1st March, 1916, presumably to meet the heavy demands due to the War. The original duty was on raw jute other than cuttings, at a general rate of Rs. 2-4-0 per bale of 400 lbs., equivalent approximately to an *ad valorem* duty of 5 per cent. The duty on cuttings was fixed at 10 annas per bale. Simultaneously, an export duty of Rs. 16 per ton was imposed on hessians and Rs. 10 per ton on sacking, corresponding to the raw jute rate on the material used in the manufacture of each class of goods. With effect from 1st March, 1917, these rates were doubled, and now stand at Rs. 4-8-0 and Re. 1-4-0 for raw jute and cuttings, and Rs. 32 and Rs. 20 for hessians and sacking respectively. The amount realised by this duty in 1922-23 was £2,195,000 (about 285 lakhs and 35,000 rupees).

It was hoped that after the requirements of the War were over this duty would be abolished, but this duty was never abolished even during the prosperous years of the Budget of the Government of India. It may be mentioned that during the War raw jute, as also the jute trade, was in a very prosperous condition, because of the need for gunny bags for war purposes. In recent times and even before the world depression the jute trade was not very prosperous, so far, at any rate, as the agriculturist's interest in the business is concerned.

I am, however, not so much concerned with passing prosperity or depression in the jute business. My main point is the injustice and iniquity of keeping jute as a large source of revenue, as also the general objections about imposing a duty on export trade. From the practical point of view retention of export duty as an item of taxation will mean that export duty on jute will practically be the main source of income from exports, at any rate, the predominant source of income.

I submit that for the following reasons, amongst others, export duty should not be retained in the Constitution.

To retain the export duty on jute will be a piece of discriminatory taxation. This cannot be justified for reasons of justice and fair play between the constituent units of a federation. In this connection I would draw attention to Section 51 (ii) of the Australian Constitution which empowers the Federal Parliament to make laws with respect to "taxation but so as not to discriminate between States or parts of States."

To retain any export duty is against the precedent laid down in the Constitution of the United States of America, to which I have already drawn the attention of the sub-Committee in my speech. That Section (Section 9, sub-section 5) runs as follows:—

"No tax or duty shall be laid on articles exported from any State."

I may add that, generally speaking, export duty is not considered to be a very satisfactory source of taxation. At any rate it should not be included as a source of taxation without elaborate enquiries, which it is not possible to make within the time at the disposal of the Expert Committee. It is true that the Taxation Enquiry Committee's Report dealt with this matter. That Committee, however, was dealing with the sources of British India as a unitary form of government. We are now concerned with a Federation, consisting of a large number of Indian States and a large number of Indian Provinces. The sources of taxation now contemplated will not be sources of taxation for a unitary form of government.

As already observed the reasons given by the Report of the Taxation Enquiry Committee should no longer be held to be applicable, but I may just mention that one reason dealt with in that Report was that jute is a monopoly, and ordinary objections to the imposition of an export duty would not apply with the same force to the imposition of an export duty on a monopoly like jute. Without entering into elaborate details, I propose to deal shortly with this point.

In the first place I am not prepared to admit that jute, under all circumstances and for all times, has the advantage of a monopoly. In such periods when the world's demand for jute is less than the supply of jute, and when the agriculturists grow a larger quantity of jute than can be absorbed by the world, that commodity cannot be considered to be a monopoly, at any rate so far as the agriculturist is concerned.

We are, however, proposing to include export duty as a permanent item of taxation. Therefore I submit that we are not justified in doing so without very elaborate enquiries.

In the next place I submit that if jute be really a monopoly, it is a monopoly practically of one Province, namely Bengal, and for the purposes of federation every canon of justice and fair play ought to lead one to the conclusion that it should be enjoyed not by all the units of the Federation, but by that particular unit, namely, Bengal.

I therefore suggest that in paragraph 10 of the Report of the Finance sub-Committee, the words "including export duties" be deleted from the first item of Federal Sources of Taxation. I would limit this item to import duties only. If we do so we shall be acting on sound canons of political economy. Instead of burdening this Note with well-known principles on this subject, I would draw attention to Mr. Donald Kerr's book, "The Law of the Australian Constitution," page 139, in which is to be found the following quotation from Professor Moore's opinion on the subject:—

> "'Duties of Customs' mean duties imposed upon the importation of goods into the Commonwealth from parts beyond the Commonwealth."

There remains only one point to be considered, namely, how during the interim period the expenses of the Federal Government can be met. It is true that the present Central Government, many of whose duties and functions will be taken over by the Federal Government, depended for a number of years on this source of revenue, and a sudden change may add to the difficulties of the position. I therefore suggest the following:—

(*a*) That export duty on all commodities, at any rate export duty on jute, should be abolished after a period of five years, and

(*b*) That during this period of five years half of the amount realised from the export duty on jute will be handed over to the Province of Bengal, which is the federating Unit where this commodity exists on a large scale.

In support of this submission I may point out that during the last 14 years the export duty on jute has contributed nearly fifty crores of rupees to the Exchequer of the Central Government, and to that extent it has relieved the tax-payer very largely. It will, therefore, be a bare act of

justice if, during the next five years, the dire necessities of the unit of its origin be relieved by the payment of half the amount realised by this duty.

I would conclude my observations by saying that the decision of the Federal Structure Committee on this point will be an acid test as to whether India with a Federal Government can reasonably be expected to do justice between the different federating units. In a federation conflicting interests between the federating units will constantly arise, and it will be necessary for representatives of India in the Federal Legislature and the Federal Executive to act with justice and fair-play. If, at this very threshold of the Federation, the very distinguished representatives from all parts of India allow the immediate needs of money to override canons of justice and fair-play, then I am afraid that the prospects of the smooth working of the Federation are not very bright. I feel that on the materials I have placed before them I can appeal with confidence to the sense of all-India nationalism of the distinguished members of this Committee to do this bare act of justice to the federating Unit of which I have the honour to be the sole representative—the more so as I have offered to bear more than a legitimate burden during the period of transition.

APPENDIX V.

NOTES ON FEDERAL FINANCE BY SIR PROVASH CHUNDER MITTER.

The discussions in the Federal Structure Committee on the Report of the Finance sub-Committee brought out prominently two points: (*a*) apprehension on the part of some of the representatives of the Indian States about accepting finanical arrangements without a fuller knowledge of their implications, although these States are equally anxious with the British India representatives to enter into federation as early as possible, and (*b*) apprehension on the part of a number of the members of the sub-Committee about delay in the declaration of policy by His Majesty's Government and in the drafting of the Act embodying a Federal Constitution if decision had to be deferred until the two Expert Committees had submitted their Report. In the opinion of many members the consequences of such delay would be very serious indeed.

This Note is submitted for a two-fold purpose. One of the objects of this Note is to suggest a procedure which, while keeping in view the two points mentioned in paragraph 1, may enable the Act to be drafted in the quickest possible time, and will at any rate enable His Majesty's Government, if they so desire, to declare their policy about setting up a Federal Constitution in India before the dispersal of the Round Table Conference. The second object of this Note is to place materials which, *it is hoped, will* be useful in dealing with questions of substance relating to Federal finance.

I suggest that it is possible to draft the Act itself, taking power to impose the details of taxation within the limits of the main heads set out in the Schedules attached, marked A, B, and C, respectively. The Act should also contain rule-making powers, and even powers to make certain constitutional changes which would enable the future Federal Government to make necessary constitutional amendments and adjustments; on a point like safeguarding of the interest of minorities, or of financial interests of Indian States, such amendments may well be with the concurrence of His Majesty's Government. A provision like that will give a sense of security to minorities and to the Indian States.

So long as the members of this Committee are on the whole satisfied that the heads of taxation would *primâ facie* be enough to meet the expenditure, and so long as the Indian States come to the conclusion that the heads suggested are likely to cause the minimum of prejudice to their interests,

there should be no objection to proceeding as early as possible with the drafting of the Act, provided that His Majesty's Government are also willing to make the necessary declaration. Further, in the constitutional proposals and arrangements for changing financial heads, some safeguarding clause may well be kept in view, such as that a change in financial arrangements will not be made, say, during the next 15 years by the Federal Government without the approval of the Federal Legislature unless a number of the Indian States who have joined the Federation (say, the representatives of the States with 40 per cent., of the population of those who joined) accept such change, and a similar reservation may also be made with regard to British India. Such an arrangement ought to remove a good deal of apprehension.

I will next draw attention to the three Schedules which are attached.

One of the items which requires explanation in order to elucidate my suggestions on the subject is Item 7 of Schedule A. I believe that from Corporation Tax from British India about 3·20 crores of rupees is likely to be raised (the actual figure may be examined, and this should not take much time). I am not aware as to how much can be raised from the Indian States under this head. I have, however, made some informal enquiries from one or two States and my impression is that there is no existing tax in the Indian States under this head, so that by submitting to this head the existing Budget of any State is not likely to be disturbed. My further impression is that taxes on this head will perhaps bring in not more than 40 lakhs of rupees from the Indian States. This, I admit, is more or less guesswork, but I have very little doubt that the percentage of the income derived under this head from the Indian States will not exceed 15 per cent., or thereabouts, of the income derived from British India under this head. It will therefore be a permanent advantage to the Indian States to submit to Corporation Tax. Further, submission to Corporation Tax will make a common element of direct taxation available to all the federating units, and on the question of principle it will mean an advantage.

Some of the arguments I have referred to above about Corporation Tax will apply with regard to a tax on income derived from business extending over more than one Province or State or extending over territories outside India. Here, too, the tax raised from British India will certainly be 5 or 6 times more than the tax that is likely to be raised in the Indian States. Here, too, I believe there is no such tax at present existing in any Indian State and the imposition of such a tax will not upset any existing Budget. To this should be added tax on interest on securities. Anyone who holds securities at the present moment has to pay this tax, unless they are in the nature of some War Bonds held free of income-tax. I have not the necessary materials before me showing what amount will be realised in British India, but I believe the amount realised in British India on this head, including the head of interest on securities, will not be less than 5 crores of rupees, perhaps more. Even if I assume, purely as a piece of guesswork, that the additional income derived from the Indian States on this head will be about 25-30 lakhs of rupees, I do not think I shall be far out. Here, too, it will be a permanent advantage to the Indian States to submit to this taxation as the share of British India will be far higher.

These heads, therefore, without taking into account salaries of employees of the Federal Government and income earned outside India on foreign investments, will produce a permanent contribution in direct taxation to the Federal Exchequer of about 9 crores of rupees. The actual figures may be investigated and this can be done very quickly so far as British India's portion of the tax is concerned. As regards the portion of the Indian States no enquiry need be insisted upon, as well-known facts of a general nature will show that the amount is not likely to be large. On the British India side we get the advantage of the establishment of uniformity and of a sound principle. the income from salaries of Federal employees has been estimated by the Memorandum of the Finance Department of the Government of India as 1 core of rupees, therefore the total will be 10 crores of

rupees, of which the share of the Indian States will be comparatively small. In view of some of the criticisms may by Lord Lothian, criticisms with which I personally agree, a system like this will be very conducive to the smooth working of the future constitution. Further, a system like this will avoid the risk of the imposition of double taxation, one set of taxation being imposed by the Federal Government and the other by the Provincial Governments of the Central Government. It will further avoid the unsatisfactory arrangement proposed in the last six lines of paragraph 2 of page 9, of the Report of the Federal Finance sub-Committee, namely, that the Federal Finance Minister should consult the Provincial Finance Ministers about the extent of the imposition of Income-tax. Lastly, this system will get rid of re-distribution of Income-tax, collected on the present basis, to the Provinces and such re-distribution is sure to lead to wrangles and ill-will between the Provinces.

The next items to which I would draw specific attention are the items in Schedule C. If all sources of taxation, even including those of the existing taxation covered by Schedule A, are left to the Indian States, then the Indian States should feel very much less hesitation in joining the Federation than they would do at the present moment without any enquiry.

Item 7 of Schedule B is also important. This suggestion, if accepted, will automatically increase the income of the Provinces, without going through the procedure of distribution wrangles. As Lord Lothian pointed out, most of us who have to deal with the problem could not altogether forget the present arrangement, nor could some of us forget the suggestions made by Sir Walter Layton in the Indian Statutory Commission's Report. At the present moment Income-tax is collected by a unitary government; in the future we are going to have a system of taxation suitable for a Federal Government, and we cannot over-emphasise this difference. The Indian Statutory Commission was also dealing with the finances of a unitary government, and at that stage there was no question of the Indian Princes joining in a Federal Government. Therefore the less we retain of the existing system and the more we try to visualise the future the better it will be for the proposed Constitution. Increased income to the Provinces will also mean the better economic position of the citizen, and is likely to affect beneficially not only the customs revenue but all sources of Federal revenue under heads 7 and 8 of Schedule A. That is an aspect of the question which should be borne in mind.

Only another important point remains to be considered. Can the budget be *primâ facie* balanced if these suggestions are accepted? I venture to think that there is a better chance of the budget being *primâ facie* balanced if these suggestions be accepted than under the system proposed in the Memorandum of the Finance Department of the Government of India, and even that of the Report of the Finance Sub-Committee. In order to deal with this point I attach herewith an extract from the illustrative Budget taken from page 12 of the Memorandum of the Finance Department of the Government of India, which is marked with the letter "X."

It will appear from this extract that there is an apparent surplus of ·94 crores of rupees of receipts over expenditure. It will, however, further appear that I have not taken into account here the last two items of "interest" and "sinking fund contribution" of this illustrative Budget on page 12. If I took these two items into account there would be a deficit. I propose to show how these deficit will more than disappear under my scheme. I have already submitted in a previous portion of this Note that I propose to include Item 7 of Schedule A as a permanent source of revenue to the Federal Government, and that this source is likely to bring in about 10 crores of rupees. These 10 crores of rupees will more than cover the deficit, and perhaps leave some surplus.

There are four other items to which I would draw specific attention. The military expenditure in the illustrative Budget is estimated to be 50 crores of rupees net. According to a report published in the London "Times," dated September 30th, 1931, and also in a recent issue of the Calcutta

"Statesman," it would appear that Sir George Schuster proposes a net reduction of army expenditure of 4½ crores of rupees. Of course that figure includes army expenditure for Burma as well. Under the illustrative Budget Burma's army expenditure is not included, but I think I can, on Sir George Schuster's figures, safely count upon a reduction of 3 crores of rupees from the Military expenditure of 50 crores of rupees for India alone. There will also be some saving under the recent retrenchment proposals and reduction of salaries, some of these retrenchments and reductions being of a permanent nature.

Item 2 includes the estimated income from Customs. At the present moment this includes a certain income from export duties. I have already submitted a Note about export duties, and I have suggested that all export duties should be abolished after 5 years, and that during these 5 years only half of the export duties should be retained by the Federal Government. I would, therefore, deduct 2 crores of rupees from the income estimated under Customs.

Item 3 is payments by Indian States (tributes) and the ·74 crores should be deducted on the receipts side. These calculations will show that this Budget will practically be a balanced Budget, but there are a number of other items in the nature of indirect taxation about which we have certain figures of probable revenue. If unfortunately, for some unforeseen reason, expenditure increases or income falls, we may well look to one or more of these items for balancing the Budget. These items are excises on matches, tobacco, silver, and kerosene and petroleum. All these items come under head 4 of Schedule A. In imposing all or any of these indirect taxes I would be willing to allow the Indian States to retain them if at the present moment there is any such tax in any State. The estimate of Sir Walter Layton from the match excise from British India alone, was 3 crores of rupees, and from manufactured tobacco (pipe tobacco, cigars and cigarettes) 5 crores of rupees. I know these estimates have been criticised by the Government of India and the income may be less than is estimated, but there will be some increase as the realisation will be not only from British India but also from the Indian States.

Under the interim Budget recently introduced by Sir George Schuster he has already proposed a 25 per cent. increase on silver and kerosene, amongst others. In the illustrative budget quoted on page 12 of the Memorandum of the Finance Department of the Government of India this increase has not been taken into account. From these four items of excise, if need be, one may reasonably expect in normal times 9-10 crores of rupees, and the contribution of the subjects of the Indian States will be comparatively small.

The appointment of two Expert Committees has been suggested in the Report of the Federal Finance sub-Committee. The first enquiry would be a general survey of the problem and an examination of the questions dealt with in paragraphs 5 to 17 and 21 to 25 of the Report. Instead of appointing this Expert Committee at this stage, figures may be obtained from the India Office to ascertain roughly what would be the income in normal times of the Federal Government from the heads of taxation suggested by me. If on receipt of this information it appears that there is a very reasonable chance of the Budget being balanced in normal times, His Majesty's Government should go ahead with the declaration of their policy, and the drafting of the Act, after ascertaining the concurrence of the Federal Structure sub-Committee. If this first Expert Committee be appointed, it should be appointed with modified terms of reference, after the Act has been passed for the preparation of the Statutory Rules. In other words I advocate a procedure similar to the one followed when the Montagu-Chelmsford Report was submitted. Then the Government of India Act was passed in 1919, the Statutory Devolution Rules were prepared thereafter, and the constitution came into operation later on when most of the Statutory Rules were ready.

The second enquiry would relate to the Indian States, and would no doubt require considerable time. That enquiry is very important from the

point of view of doing justice between the States and British India. Materials will undoubtedly be necessary. The Report of this second Committee may well be submitted to the Federal Government of the future. In order to give every reasonable confidence to the States, I personally have no objection to giving a right of appeal to the States on the Report of the second Committee from the decision of the Federal Government to His Majesty's Government. If such a right of appeal be conceded the States cannot have any reasonable ground for complaint, because at the present moment and under rules of paramountcy the decision of these questions lies ultimately with His Majesty's Government.

I would therefore submit that if the outlines of my suggestions be accepted, there need not be any difficulty about beginning the drafting of the Act at the earliest possible time, provided that His Majesty's Government be willing to make the declaration of policy before the Round Table Conference disperses from London.

SCHEDULE A.

Federal Sources of Taxation.

1. External customs.
2. Salt.
3. Export opium.
4. Excises on articles with the exception of excises on alcohol, narcotics and drugs.
5. Receipts from Federal Railways, Federal Posts and Telegraphs and other Federal commercial undertakings.
6. Profits of Federal currency.
7. Corporation tax, tax on income derived from business extending over more than one Province or State or extending over territories outside India, tax on interest on securities as defined in Section 8 of the Indian Income-tax Act, 1922, salaries of employees of the Federal Government, and on income earned outside India on foreign investments (this may be more specifically defined under the powers taken under the rule-making sections of the Act).
8. Commercial stamps (to be more specifically defined under the powers taken under the rule-making sections of the Act).

SCHEDULE B.

Provincial Sources of Taxation.

1. Land revenue.
2. Excises on alcohol, narcotics and drugs.
3. Stamps, judicial and non-judicial, with the exception of commercial stamps.
4. Forests.
5. Provincial commercial undertakings.
6. Succession duties, if any.
7. Income-tax on all sources of income other than those referred to in Item 7 of Schedule A, including income-tax on property within the Province or State, salaries earned within the Province or State by all persons other than employees of the Federal Government business carried on within the Province or State, earnings from professionals within the Province or State.

SCHEDULE C.

Sources of Taxation in the Indian States.

1. All sources of taxation other than those included in Schedule A.
2. Continuance of existing taxes, even though included in Schedule A.

Extracts from the Illustrative Budget taken from page 12 of the Memorandum of the Finance Department of the Government of India.

Expenditure.	Reserved.	Receipts.
50,00 (net)	Military (1)	..
1,60	Political	..
1,91	Frontier Watch and Ward . .	..
,31	Territorial and political pensions	..
,30	Ecclesiastical	..
54,12		..
	Unreserved.	
,85	Customs (2)	53,01
1,23	Salt	6,70
	Opium	,15
	Railway contribution . . .	5,01
	Payments by Indian States (3) . .	,74
	Taxes on Income (Federal) . .	Gross 1,00 less ,04 Collection charges ,96
1,68	General administrations . . .	..
,33	Audit	..
,91	Scientific Departments . . .	..
,34	Aviation	..
,18	Grants to Universities . . .	..
,17 [net]	Agricultural Research, etc. . .	..
,27 (net)	Stationery and Printing . . .	..
.95 (net)	Civil works	..
4,09	Administered areas	2,14
,60 (net)	Miscellaneous and other heads . .	..
2,36	Pensions	,31
68,08		69,02

APPENDIX VI.

MEMORANDUM BY HIS HIGHNESS THE MAHARAJA OF INDORE, HIS HIGHNESS THE MAHARAJ RANA OF DHOLPUR, NAWAB LIAQAT HAYAT KHAN AND SIR PRABHASHANKAR PATTANI.

The future constitution of India has been the subject of close examination by many able and eminent authorities, and as it was considered necessary to bring about a union between British India and the Indian States for determining the policies in regard to subjects of common concern, and execution and administration thereof, various methods for bringing about that unity have been explored, and proposals formulated during the past few years. At the Round Table Conference held last year, however, the suggestion to bring about such a union on the Federal basis took more definite shape and the deliberations of the Conference proceeded on the basis that the future constitution of India should be of a Federal type embracing both British India and the Indian States. The precise form and structure of the new Federal Government, as rightly stated *inter alia* by the Prime Minister in the declaration made by him on behalf of His Majesty's Government on 19th January, 1931, was to be determined after further discussion with the Princes and representatives of British India.

The Conference has resumed its work and the Federal Structure Committee is now engaged in formulating the precise form and structure of the new constitution in all the minute details. This must naturally require working out and evolving a scheme that might be acceptable to the various interests concerned.

To secure the support and adherence to it, the constitution must take due note of all the various standpoints on the several details and provide for them adequately; failing that, it would not have the necessary support, and, consequently, would not work successfully, and if it is pushed through under pressure, it is likely to do more harm than good.

The Federal Structure Committee outlined, after their deliberations last year, a scheme for the proposed future Federal Constitution for India. Details on important points were left over for further consideration last year and they are being taken up now. As I was not then a member of the Round Table Conference, and had no occasion to communicate my views to the Indian States' Delegation or the Conference, I consider it advisable for me to express my views at this stage on the several important points at issue, and take this opportunity of placing them on record for consideration.

In introducing the scheme hereafter stated, I shall add one observation, *viz.*: that the future constitution for all-India on the Federal basis will have to be on the basis suited to the peculiar conditions in the country, and not on the basis of the constitutions of a Federal type existing in other countries. If no two of those constitutions are exactly alike, there is greater reason and justification for India with her peculiar conditions and a large variety of interests (*e.g.*, non-autonomous Provinces and Sovereign Indian States) to evolve our own scheme and a constitution which would be suited to, and satisfy the requirements of, the several interests, and varying and peculiar conditions and sentiments of the people and their Princes.

In my opinion, the main features of the constitution should proceed on the following lines:—

1. *The Federating Units to be*—

   (1) Federated British Indian Provinces, *i.e.*, British India and

   (2) The States collectively.

   The States will, with the assent of the Crown, constitute themselves into an Electoral college which may be given any suitable name, *i.e.*, all the States will make one group or unit for the purpose of electing their quota of representatives to the Federal Legislature.

2. *Federation to be for purposes of specified matters of common interest only.*

3. *Functions.*

Policy and Legislation in regard to, and administration of, certain specified subjects, as detailed in Annex. A.

NOTE.—The Federal Legislature will lay down policy and enact laws relating to the subjects enumerated in Annex. A.

The States will, then, automatically pass the Federal Laws as State Laws and they will then come into force within the territories of the States.

In the event of failure on the part of any State to carry out the policy and laws passed, the Confederation of States will use its influence and bring round the defaulting State through its representative; but even if that fails, which is not likely, the Federal Government will take necessary action through the Crown.

4. *Structure and Composition of the Federal Government.*

(*a*) Legislature.

There should be preferably only one Chamber, to which representatives could be sent by States through the Electoral College referred to above. The representation of the Indian States should be 50 per cent. If it is bicameral, the States should have 50 per cent. representation in the Upper Chamber and on population basis in the Lower Chamber.

(*b*) Executive.

(1) The States need not insist on a fixed number of representatives in the Federal Executive.

(2) The Executive will be responsible to the Legislature.

5. *Method of Election of States Representatives.*

The States will constitute themselves into a Confederation for the purpose of Federation with British India. This will serve as an Electoral college for electing their representatives to the Federal legislature. The Confederation will be composed of representatives of Sovereign States and of groups of the remaining States.

Major States may be allotted a fixed number of seats to ensure their individual representation, and some regional distribution may also take place. For the purposes of election the principle of plural voting may be accepted, the number of votes allotted to a particular State depending on the State's political position, though population and income may also be given due weight. The details will be settled by the States themselves.

The representatives constituting the quota of the States will represent the States collectively, and they will include among them representatives of major States for whom seats will be reserved.

6. *Federal Finance.*

Federal finance will be found from indirect taxation only, so far as at least the States are concerned.

7. *Supreme Court and Arbitration Courts.*

There should be a Court to deal with constitutional question only. In case the volume of work does not justify the constitution of a permanent Court, provisions should be made for the constitution of a Court each time as the occasion arises but the qualifications of the eligible personnel and the method of its constitution shall have to be specifically and definitely laid down in the constitution.

For disputes between the Crown and the Indian States, provision should be made that they shall be settled by an Impartial Court of Arbitration, distinctly separate from the Federal Court, the constitution of which should also be defined beforehand. The Arbitration Court should also decide disputes between a State or States and Provinces *inter se*, or between a State or States and Central Government of British India. Neither the Federal Court nor the Court of Arbitration shall exercise jurisdiction as the highest Court of Appeal.

ANNEX A.

Number as in the Devolution Rules.	SUBJECT.	
5.	(*a*) Railways . . .	Federal, for Policy and Legislation. Administration to be Federal only for through lines.
	(*b*) Aircraft and all matters connected therewith.	Ditto.
	(*c*) Inland Waterways, etc. .	Federal, for Policy and Legislation in respect of inland waterways, affecting more than one component State.
6.	Shipping and Navigation, etc.	Federal, for Policy and Legislation.
7.	Lighthouses, etc. . . .	Federal, for Policy and Legislation.
8.	Port Quarantine and Marine Hospitals.	Federal as far as international requirements are concerned.
9.	Ports	No special opinion.
10.	Posts, telegraphs, telephones (including wireless installations).	Posts, telegraphs, Trunk telephones and wireless installation to be Federal, but with such qualifications as may be necessary for the purposes of adjustment with the States in matters of detail.
11.	Customs	1. Maritime Customs: Federal, subject to special rights and obligations under Treaties, agreements and engagements with the Maritime States. 2. On external frontiers of India: Federal, subject to special case of Kashmir.
	Salt	Federal, subject to the existing rights of the Indian States.
12.	Currency and Coinage .	Federal, subject to adjustment, with the States concerned, of such rights as are not already conceded by them.
14.	Savings Bank . . .	Post Office Savings Bank: Federal for Policy and Legislation.
15.	Indian Audit Dept. . .	Federal Audit to be Federal.
21.	Control of Cultivation and Manufacture of Opium. Sale of Opium for export.	Federal, for Policy and Legislation.
22.	Stores and Stationery required for Imperial Departments.	For Federal Departments to be Federal.
24.	Geological Survey of India .	Federal.

Number as in the Devolution Rules.	SUBJECT.	
26.	Botanical Survey of India .	Federal.
27.	Inventions and Designs .	Federal for Policy and Legislation.
28.	Copyright	Federal for Policy and Legislation.
29.	Emigration from and immigration into British India.	Emigration from and immigration into India: Federal for Policy and Legislation.
31.	Central Police Organisation	Federal Police to be Federal.
35.	Survey of India . . .	Federal.
38.	Meteorology . . .	Federal.
39.	Census Statistics . .	Federal for Policy and Legislation.
40.	All-India Services . .	Federal services should be Federal.
44.	Immovable property, etc. .	Immovable property acquired and maintained at the cost of Federal Government should be Federal.
45.	Public Services Commission.	Federal for the purposes of Federal Services.

NOTE.—The remaining subjects should not be federalised.

APPENDIX VII.

MEMORANDUM BY MR. A. LATIFI ON A PROPOSED FEDERAL COUNCIL.

(Circulated at the request of Mr. M. K. Gandhi.)

As an immediate step towards Federation, it is suggested that a Federal Council with advisory functions may be set up, in order to perform functions like those mentioned in the following schedule or any others that may be agreed upon. It is hoped that such a Council would keep the Central Executive *responsive* to the Provincial Governments just as the Central Executive is expected to be *responsible* to the Central Legislature. It would help the Provinces to " feel that they are represented at the Centre " and thus implement the recommendation in paragraph 32 of the Second Report of the Federal Structure sub-Committee where it is stated that " in their view it is of the utmost importance that the tie between the Centre and the units should be as closely knit as possible; and that it should be a tie of natural affinity of outlook and interest and capable of counteracting the centrifugal tendencies which, but for such a counterpoise, would be liable to develop in the Provinces from the increased autonomy now in prospect."

The Federal Council should, it is suggested, be formed more or less on the lines of the Bundesrat of the German Constitution of 1870,* but the analogy of the Imperial Conference, as well as of the Council of the League of Nations, would be in point. The Council may, with the Governor-General as President, include the Governor-General's Executive Council and the members of the Governments of the various federating units each such Government being represented in person or by proxy by its members (other than the Governor or Ruler) up to the number of votes it can cast. The votes of each unit—to be cast en bloc—may correspond to that unit's strength in the Senate.

(Signed) A. LATIFI.

* For a good, and indeed the classical English description of the Bundesrat of 1870, *see* A. L. Lowell's " Government and Parties in Continental Europe," Vol. I, Ch. 4.

SCHEDULE.

ADVISORY FUNCTIONS OF THE FEDERAL COUNCIL.

Council of Greater India in regard to those States which do not join the Federation (Simon Report, Vol. II, paragraphs 236-237, 315).

Inter-Provincial Financial Council (Simon Report, Vol. II, paragraphs 163, 305). Particularly in such matters as fixing the rates of the Income-tax.

Provincial Loan Council (Simon Report, Vol. II, paragraph 311).

Council for advising in the co-ordination of Inter-Provincial activities (Simon Report, Vol. I, paragraphs 258-259, and Vol. II, paragraphs 184-187).

Council for the ratification of international agreements, the approval of emergency taxation under section 21 of the Federal Finance Sub-Committee's report, and advice on matters like those for which an Indian Privy Council is suggested in the Simon Report, Vol. II, paragraph 231, bottom of page 199.

APPENDIX VIII.

NOTE ON THE PROPOSED FEDERAL LEGISLATURE FOR INDIA BY SIR MIRZA ISMAIL.

The most important question on which the Conference has still to reach a final decision is the constitution of the Federal Government.

The main suggestions of the Report of the Federal Structure Committee were:—

(1) The Federal legislature to consist of two Houses; the component elements of the Federation to be represented in both Houses, Joint Sessions being held whenever differences of opinion between the two Houses arise.

(2) The Executive to be responsible to the Legislature.

(3) Reserved subjects and safeguards in financial matters.

The Legislature, as proposed by the Federal Structure sub-Committee, has the appearance of a bi-cameral Legislature, but it is not really so. It will function as a uni-cameral legislature—an unnecessarily unwieldy one of some 600 or 700 members—on all occasions when a difference of opinion arises between the two Houses.

The question is whether such a constitution is likely to work smoothly and effectively, and suit the needs of a vast and heterogenous country. Experience has shown that in many Federal constitutions, Senates with concurrent powers have failed to justify their existence. No nation has been successful in constructing a body representing the Federal element in an effective because undiluted manner. The fault lies in the fact that nowhere have the States forming the federation been entrusted with co-operation in the work of the Central Government. In all constitutions the second Chambers have been made directly or indirectly representative of the parties in the federating units, who are already enabled to send their representatives to the Popular House. Thus, the political factor, namely, the people, is doubly represented, once in the Popular House and again in the second Chamber, even though its representatives are elected indirectly by the parliaments of the States. This is the considered opinion of some of the most eminent jurists of our day, and based not only on a profound and extensive study of constitutional law and practice in all countries of the world, but also upon actual experience of the practical working of a Senate in modern Federal States.

Would India do wisely to disregard the lessons of experience, and embark upon her great experiment without taking such facts into consideration?

The writer believes it to be possible to devise a constitution which will provide for, and remedy, this serious defect. He asks for consideration of the following plan.

The two principal organs of the Federal State of Greater India would be—

(1) A popular house, which may be described as the Federal Assembly; and

(2) Another body, which may be described as the Federal Council.

The Federal Assembly will consist of representatives chosen by direct and indirect election, preferably by both methods, the representation being more or less on a population basis. The number may be fixed at 300-350, the proportion of the members from the States being 33⅓ per cent. of the total strength. As regards the method of election, the suggestion made by Mahatma Gandhi, of villages sending their elected representatives to an electoral college to vote on their behalf, is likely to secure the best results, and is plainly more practical than the ordinary method of a direct vote.

As the Federal Council is to be that organ of the Federal Government which upholds the federal character of the constitution, it would be composed of delegates appointed by the Governments of the States and Provinces. The smaller the number of its members the more capable it is of doing effective work.

Unless the representatives composing the Federal Council are chosen in some way by the Governments of the units, the constitution will still be that of a unitary State, as the federal elements will be lacking. For this reason the members of the Federal Council should be appointed by the Governments of the States and Provinces at their own discretion and exclusively with reference to their expert knowledge. The representatives must vote and act according to the instructions which they receive as agents of their Governments. Plural votes of a State or a Province must be given uniformly. The Federal Council may consist of 60 members of whom at least 40 per cent. should be from the States.

The Central Government must be represented in the Federal Council in order to safeguard the co-operation of the supreme Federal authorities and to prevent the various elements in the Council from working on parallel lines or against each other.

Legislative Powers of the Federal Council.

The Federal Council would have a suspensory veto on laws passed by the Federal Assembly with which it did not agree.

If the Federal Council exercises its right of veto, the Federal Assembly would then have to show a qualified majority, *i.e.*, a two-third or three-quarter majority, for its resolution. The right of veto would have to be exercised by the Council within an adequate period, to be determined by the constitution.

Bills prepared by the Federal Executive would be laid, first, before the Federal Council, and after having passed this body, before the Federal Assembly. If the Federal Council wished the Bills presented to be altered, the Federal Executive could modify the draft. If it did not do so, the Federal Council should have the right of adding to the draft its own dissenting opinion, on passing the Bill on to the Federal Assembly.

Besides the right of considering Bills introduced by the Executive, the Federal Council should share with the Assembly the right of introducing Bills. The members of both bodies should have the same right.

Executive Functions of the Federal Council.

In accordance with the nature of the Federal Council as the specifically federal organ of the Indian Federal State, it should be in possession of certain powers with regard to the Federal Executive. Its co-operation in this sphere can, however, only be of an advisory nature, if it is not to restrict

the Federal Executive unduly in the fulfilment of its task of government. The Federal Council might enjoy the right of demanding reports concerning current administrative matters from the Executive, and information regarding the preparation of future Bills.

The Federal Council, moreover, might have a right of co-operation in certain administrative matters, *e.g.*, external relations, like the Senate of the United States of America. Or, for example, the Federal Council might have a right to propose appointments to certain high official posts. The Government would not be rigidly bound by such proposals. In practice, however, the Government would presumably adopt them, unless there were any special objections.

The advantages of constituting the Upper House in the manner proposed, include the following:—

(1) It will be of a manageable size, and therefore better adapted for despatch of business and more economical in working than a larger body composed of some 250 or 300 members. It will cost less; it will attract better men without unduly depleting the Provincial and State Legislature.

(2) The members being selected with reference to their expert knowledge will be comparatively free from party influences, will be more "federally-minded" and less bound up with local and sectional affiliations.

(3) The points of view of the Governments of the units will find timely and authoritative expression in the Council, and the occasions for conflict between these Governments and the Central Executive will be avoided or reduced to a minimum.

(4) The objections of British India in regard to powers of financial control of the Upper House will be obviated.

(5) As the Council will be invested only with a suspensory, and not an absolute veto in Legislation, British India should have less hesitation in giving even 50 per cent. representation to the States in such a body.

(6) On the other hand, as an offset to its slightly inferior status in legislation, the Council will have large powers of initiative; the right of association with the Executive in certain administrative matters, and advisory influence in all matters of policy which concern the States and the Provinces. In these important functions, the States and British India will share equally.

(7) The scheme would allow of States sending delegates to address (without voting in) the Council on matters in which they may be specially interested. This should be an acceptable concession to those States which cannot hope for individual representation.

APPENDIX IX.

MEMORANDA ON EXPORT DUTY ON JUTE AS A FEDERAL SOURCE OF REVENUE.

I.—*By Sir Provash Chunder Mitter and others.*

On the eve of the proposed Federation, we, the Bengal delegates, have carefully considered the question whether the export duty on jute—a monopoly produce of Bengal—should be allotted as a Federal source of taxation.

In the year 1929-30 the export duty on jute yielded Rs. 463·67 lakhs. Since this duty was imposed in 1916 Bengal has contributed nearly 50 crores to the Government of India from this source alone, thus affording considerable relief to the taxpayers of other Provinces. Besides this export duty, income-tax and super-tax derived from jute mills and jute business (quite

apart from income-tax derived in Bengal from other sources of income) are estimated to have contributed about 2½ crores annually to that Government.

Jute is grown by the ryots of Bengal under conditions of great hardship and difficulty, seriously affecting their health. In the past, on account of the existence of this export duty, it has not been possible to utilise this monopoly product of Bengal for raising revenue for the Provincial Exchequer. This is one of the main reasons why the Government of Bengal has been unable to take adequate steps for the amelioration of the condition of the peasantry, or for the promotion of the general welfare of the people of the Province.

The financial condition of the Government of Bengal for the last 11 years, and perhaps for a much longer period, has been well-nigh desperate—so much so that it has not often been possible for that Government to discharge efficiently even some of its primary functions. Under these circumstances it has been impossible for that Government to do what can be reasonably expected of every civilised government in the spheres of education, public health, agriculture, and other nation-building activities.

The allocation of the export duty on jute as a Federal source of revenue will be a form of discriminatory taxation to which we, the delegates from Bengal, can never agree. From what we have stated it would appear that no constitutional advance is worth having in Bengal unless adequate funds can be made available for the Province. Under the circumstances we regret to have to emphasise that it will serve no useful purpose for Bengal to join the Federation if this unreasonable sacrifice be demanded of her. We trust, however, that the sense of justice and fair-play of the members of the Federal Structure Committee will yet prevail, and that this discriminatory taxation will not be demanded of Bengal.

We have authorised the Bengal representative on that Committee to submit a fuller Note on the subject.

(Signed) P. C. MITTER.
A. K. FAZL-UL-HUQ.
NARENDRA NATH LAW.
J. N. BASU.

I agree. I sign this, subject to one observation. I have heard it stated that as jute is a monopoly of Bengal, the export duty on jute is really paid, not by the taxpayers of Bengal, but by the foreign purchaser. This opinion is held, amongst others, by some who, as officials or non-officials, are more interested in the welfare of other Provinces than that of Bengal. I do not at all agree with this view, and I am of the opinion that this argument does not bear any close examination.

It is true that jute is a monopoly of Bengal in the sense that it is grown in Bengal and it is not grown in other parts of the world. But the question of substance is whether the foreign buyer really pays the tax, the producer being in no way affected because of the existence of the tax. If in a particular year the total demand for gunny or hessian or loose jute by the foreign buyer is less than the amount manufactured or produced in Bengal, then in such a year the foreign buyer is in a position to dictate the price either of the manufactured article or of raw jute. In post-war days such a contingency has constantly arisen. In such years, therefore, jute mills in Bengal or the exporter of raw jute must agree to the price paid by the foreign buyer. The export duty in such years must largely, if not wholly, fall upon the manufacturer, or the primary producer, the ryot.

The position of the primary producer, the ryot, is, however, different from that of the manufacturer in every year. For many reasons into which I need not enter, the ryot can never control the price, and as jute is a monopoly crop there is always the tendency on the part of the ryot to increase the cultivation of jute. Even in years when the demand of the

foreign buyer is large, there is a wide difference between the price received by the ryots and the price paid in foreign markets, and the existence of the export duty is a material factor which the exporter or manufacturer of jute in Bengal will always take into consideration in fixing the price.

Then, again the jute produced by the ryot comes into the hands of the purchaser for the jute mills or the export trade through many intermediaries, and the existence of these intermediaries makes it more difficult for the ryot to fix his price. In order to grow jute the ryot has to undergo many hardships, and has to work under conditions which must affect his health. One process in the preparation of jute is to keep it in water for a number of days, and then to separate the fibre from the stem by a manual process while standing in the water. Keeping the jute submerged in water for a number of days breeds malaria and other diseases in the neighbourhood.

If Bengal could get the value of the jute as a source of revenue for the Province, then one of the great problems of Bengal, namely, the existence of malaria on a wide scale, would be reduced.

For all these reasons I think it is a mistake to assume that the export duty on jute is really paid by the foreign purchaser, and that the manufacturer or the primary producer are in no way affected or concerned by the export duty.

Assuming, however, for the sake of argument, that jute is a monopoly and that the export duty too is paid by the foreign purchaser, then Bengal cannot in justice be denied the profits received from that monopoly, as it is conceded that that monopoly is a monopoly of Bengal. Why should the rest of India be allowed to profit by this monopoly which so seriously affects the health conditions of the Province and the amenities of life of an overwhelming section of its poorest population, namely, the agriculturists.

Lastly, monopoly or no monopoly, with the existence of the export duty it is not possible for the Government of Bengal to impose any tax in any shape or form on jute. There is, therefore, the question of substance that taxation of jute as a source of export duty precludes the Government of Bengal from deriving any revenue by taxing jute.

(Signed) P. C. MITTER.

II.—*By Mr. A. H. Ghuznavi.*

The financial difficulties of Bengal under the Montagu-Chelmsford Reforms are notorious.

Potentially one of the richest Provinces in India, Bengal is actually, from the point of public revenue, one of the poorest. There is no need to detail the causes which have led to this state of affairs, for they are well understood. The outstanding cause is that certain revenues, of which the richest yield is from Bengal, have been declared to be central sources of revenue.

With regard to Income-tax the difficulty of allotment is notorious, but no such difficulty exists in the case of the export duty on jute. Every argument supports the contention that this should be a Provincial source of revenue.

In the interests of the down-trodden peasantry of Bengal, I ask that the export duty on jute should be classified as a Provincial and not a Federal source of revenue in paragraph 10 of the Report of the Federal Finance sub-Committee.

The export duty on jute was first imposed in 1916 as a purely War measure, but it has been continued to this day in the teeth of the just protests of every section of the people of Bengal. The reason is, of course, that the duty has been found very profitable, its yield in 1929-30 being Rs. 463·67 lakhs, or over 92 per cent. of the total export duties realised in all India.

The land revenue, as representing the State's share in the profits of agricultural land, is the back-bone of the finances of every Province of India. In Bengal, however, this source of revenue has been very seriously curtailed

Indian Round Table Conference

(SECOND SESSION)

7th September, 1931—1st December, 1931

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AND

MINORITIES COMMITTEE

(Volume III)

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INTRODUCTORY NOTE.

Proceedings of the Second Session of the Indian Round Table Conference in Plenary Session will be published separately as a Command Paper, to which this volume is supplementary.

The Introductory Note to the Command Paper explains, briefly, the procedure adopted by the Conference at its Second Session.

NOTE.

The following Heads for discussion were placed before the Committee by the Chairman:—

1. Strength and Composition of the *Federal Legislature*.
2. Questions connected with the *Election* of Members of the Federal Legislature.
3. Relations between the two Chambers of the Federal Legislature.
4. Distribution of Financial Resources between the Federation and its Units.
5. The Ministry and its Relations with the Legislature.
6. Distribution of Legislative Powers between the Federal and Provincial Legislatures, and Effect in the States of Legislation relating to Federal Subjects.
7. Administrative Relations between the Federal Government, the States and the Provinces.
8. The Federal Court.

It will be noted that: (*a*) the above Heads were not taken up by the Committee in numerical order; (*b*) Heads 5 and 6 were only partially discussed; (*c*) no discussion on Head 7 has yet taken place.

Detailed points for discussion in connection with each Head were drafted by the Chairman. They are printed in this volume at the commencement of the proceedings under the respective Heads.

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CORRIGENDUM TO SUB-COMMITTEE PROCEEDINGS, VOL. I (FIRST SESSION).

In the proceedings of the Seventh Meeting of the Federal Structure sub-Committee, dated 8th January, 1931, the following should be inserted at the conclusion of Sir Akbar Hydari's speech, on page 224 of the published volume:—

> "*Chairman:* I am sure we are all very much obliged to Sir Akbar Hydari for his speech. If he will permit me to say so, I am sure I am voicing the opinion of the Committee if I use a classical expression and say that, having regard to Sir Akbar's outlook and his experience, he is quite the Nestor of the Conference."

MINORITIES COMMITTEE

(SECOND SESSION).

The Committee was re-constituted as follows:—

Mr. Ramsay MacDonald (Chairman).
Mr. Wedgwood Benn.*
Mr. Isaac Foot.
Mr. Arthur Henderson.*
Sir Samuel Hoare.*
Sir William Jowitt.
The Earl Peel.
The Marquess of Reading.
The Lord Snell.*
Major the Hon. O. Stanley.
The Marquess of Zetland.*
His Highness The Aga Khan.
Sir Saiyed Ali Imam.*
Maulana Shaukat Ali.*
Dr. B. R. Ambedkar.
Mr. E. C. Benthall.*
Mr. G. D. Birla.*
Sir Hubert Carr.
Mr. C. Y. Chintamani.
The Nawab of Chhitari.
Maulvi M. Shafi Daoodi.*
Dr. S. K. Datta.*
Mr. Fazl-ul-Huq.
Mr. M. K. Gandhi.*
Mr. A. H. Ghuznavi.
Sir Henry Gidney.
Sir P. Ginwala.*
Khan Bahadur Hafiz Hidayat Husain.
Sir M. Iqbal.*
Mr. N. M. Joshi.
Pandit Madan Mohan Malaviya.*
Sir Provash Chunder Mitter.
Dr. B. S. Moonje.
Mrs. Sarojini Naidu.*
Raja Narendra Nath.
Rao Bahadur A. T. Pannir Selvam.
Sir A. P. Patro.
Diwan Bahadur M. Ramachandra Rao.
Mr. B. Shiva Rao.
Sir Sayed Sultan Ahmed.
Sir Muhammad Shafi.
Sardar Sampuran Singh.
Mr. Srinivasa Sastri.
Sir Chimanlal Setalvad.
Sir Phiroze Sethna.
Dr. Shafa'at Ahmad Khan.
Begum Shah Nawaz.
Rao Bahadur Srinivasan.
Mrs. Subbarayan.
Sardar Ujjal Singh.
Mr. Zafrullah Khan.

* Denotes new members.

PROCEEDINGS OF THE SEVENTH MEETING OF THE MINORITIES COMMITTEE HELD ON MONDAY, 28TH SEPTEMBER, 1931, AT 12.0 NOON.

Chairman : My friends, I should like to say first to all of you how very glad I am to see you again and to find associated with us new Delegates bringing into our counsels an extended representation and also an extended authority. I am very sorry that certain preoccupations, the existence of which you all understand, have made it impossible for me to see you personally as I should have liked before now; but with that generosity and sympathy that you showed me when we were meeting here before I am sure you will forgive what may appear to be rather a gross shortcoming on my part.

I welcome especially those of you who are here for the first time. And may I with all my heart bespeak the most hearty and the most friendly co-operation in the solution of a problem which in its nature is exceedingly difficult, but which is as important as it is difficult?

If one were to turn to any great philosophy or any great system of thought upon which could be built up a harmony between races, a harmony between conflicting thought, where could one go to find it more readily than to the great philosophies of India itself? Those philosophies where brotherhood is inculcated, where peace and harmony and co-operation are enjoined; those philosophies which look at the world not in a mere abstract way but as something essentially composed of differences, and yet essentially calling for a harmony of difference rather than a mere uniformity of thought or of action.

That is the problem which is before the Round Table Conference. We do not want to change the Hindu: we do not want to change the Muslim; we do not want to change the Sikh. We want to change none of you, with great and noble historical traditions of which you are very proud, and I hope you do not want to change us. But we do want, recognising our differences and maintaining and cherishing those differences, nevertheless to find some means by which we can find co-operation for the good of each other, and through that good for the good of the whole world. In that spirit I take the chair at this Committee.

When we met last, the problem of minorities, I candidly confess, and I am sure those of you who were with me then must also candidly confess, baffled us. We could not come to a solution of the difficulties. I took the view then that this minority difficulty should be settled by yourselves. To my mind it is a problem internal to the Indian problem, and I again appeal to you, as I appealed to you then, to agree amongst yourselves regarding the safeguards that are necessary for each of you for your existence, and to make those arrangements which will be satisfactory to all of you concerned in this matter.

Some of you were good enough, when we last met, to suggest that in the end the Government or some of us should arbitrate when you failed to agree. I think, my friends, that is a most unsatisfactory solution of the difficulty. Any arbitration would probably be unac-

ceptable to you all; it would meet the needs or the desires of none of you. And imagine the fate of the poor arbitrator when you go home to India and you begin to explain the work that has been done and the arrangements that have been come to by this Conference. I have often been a scapegoat in my life, and I am willing to be a scapegoat again if it is good and if it is necessary; but I think you yourselves in this respect, if I might say so, should become your own scapegoats and take upon your own shoulders the responsibility of the solution of this very difficult and intricate problem. If you are responsible for an agreement, you will work it out, you must work it out, you will have to work it out; because you will have nobody to blame for it except yourselves. If somebody else offers a solution and imposes it upon you, you will not have upon you that same obligation to work it with all your hearts, all your strength and all your souls. I therefore repeat what I said to you before—to those of you who were here before—and appeal to you to do your best to settle this amongst yourselves. If you would allow me to help you, if any help from me is necessary, it is at your disposal; I shall be only too glad to be of any assistance to any of you, individually or as sections, in order that this agreement may be reached.

Now, I do not think that any long speeches will be necessary on this occasion; I want to get to conclusions as quickly as conclusions can reasonably be come to. There are many problems to solve, many difficulties to discuss, and we shall have to have patience with each other during these discussions, but it is quite unnecessary for us to make very long speeches of a general character upon the problems themselves. We are face to face with the question: how can the various majorities, minorities, how can the various communities, how can the various peoples with a past, with traditions, how can those who have been outside the pale and those who have been inside the pale, now that we are considering a new constitution for India, a constitution that will be based upon democracy, a trust of the people, how can we all together devise means by which we will share in the power of that Government and use that power not in the interests of a sect or a community or a class, but in the interests of the whole of the masses of the people which compose the Indian population? That is our problem, that is your problem. Set about it and solve it.

I have no list of speakers in front of me. Have you amongst yourselves delegated anyone to put a view, or have you any proposal to make? Let me put a question to you: Is it true as I have heard that there are some negotiations going on, that have a chance—I will not put it higher than that—of being successful?

Sir Ali Imam : Mr. Prime Minister, I have no delegated authority whatsoever to make any submission to you. It so happens that I am here, and if I may say so, I have the privilege of representing your choice, Sir, of selection. I am at present really nobody, but I belong to a party in India which is known as the Nationalist Muslim Party. From that Party itself I have no authority, but, as I belong to that Party, it is possible for me to place before you,

Sir, and my fellow delegates and colleagues, what the Muslim Nationalist point of view is in regard to this matter of the new constitution.

I am personally not aware if there are any negotiations going on so far as the Muslim Delegation is concerned. I have had no opportunity of knowing that there are any proposals at present that are under consideration. It may be, as I have heard generally, that some kind of understanding may be arrived at. I do not vouch for it; I know nothing about it. If you desire, Sir, that I should put before you the Muslim Nationalist point of view, I shall be ready to do so; but, of course, I must have your permission, because it may take a little time, and economy of time in a meeting like this is one's principal aim.

Chairman : The point is that this Committee's business is very strictly limited to a consideration of the Minorities problem.

Sir Ali Imam : It is from that point of view that I shall approach the subject.

Chairman : If there is no other official intervention shall I call on Sir Ali Imam?

H.H. The Aga Khan : I believe that Mahatma Gandhi is going to see the Muslim Delegation to-night. We hope to-night to have a friendly talk with our friend. That is all that I can tell you as far as any possible negotiation is concerned.

Pandit M. M. Malaviya : It is true that conversations have been going on on the Hindu-Muslim question, and generally on the minorities question, among certain members of this Committee. I therefore think that it would be an advantage to adjourn the discussion in order that those conversations should have a chance. If opinions are expressed to-day before we know what the result of the conversations have been, I do not think that that will help the cause. I therefore think that it would be an advantage to let the matter stand over until the next meeting of the Committee.

Chairman : I understand, Pandit Malaviya, that you suggest that we should adjourn now?

Pandit M. M. Malaviya : If Sir Ali Iman wishes to place the Muslim point of view before the Committee I have no objection, but I thought that a general discussion on the subject might stand over.

Chairman : I would suggest that if you are going to adjourn we had better not have any speech which is likely, perhaps, to raise unnecessary difficulties.

Pandit M. M. Malaviya : That was the reason for my suggestion.

Sir Provash Chunder Mitter : I think that we should adjourn, but I should like to mention that so far as the Bengal Delegates are concerned we have not heard anything. We shall be quite willing to join in these conversations.

Chairman : There are other minorities which are represented. If we adjourn, they will have to see if they can get their point of view made ready for expression. An adjournment would be useful only if those representatives of the other sections would use the adjournment period for the purpose of preparing something, and then handing in to me, in preparation for the next meeting, a list of names of those who would like to take part in the discussions. I am rather at a disadvantage this morning because nobody has handed in his name. If you would like it, I could conduct this Conference in such a way that you would break up in the course of two or three meetings. That is exactly what I am determined shall not happen. In order to be able to guide the discussion in a friendly and in a profitable way I should like to know who is going to speak, and what points of view are going to be put forward, so that the speakers might be called upon at the most helpful moment. The idea is not to suppress speeches at all, but in order that the discussion shall proceed in such a way as to produce the maximum amount of good. If you do adjourn now, please remember that the others of you are coming to a bargain with me that you too will use this time for the purpose of making preparations for a statement which will be brief, to the point, and comprehensive, and, I beg of you, helpful. On that understanding, and with that bargain, will you adjourn?

Dr. Ambedkar : I would like to say one word before we adjourn. As regards your suggestion—that while these negotiations are going on members of the other minority communities should prepare their case—I should like to say that, so far as the Depressed Classes are concerned, we have already presented our case to the Minorities sub-Committee last time.

The only thing which remains for me to do is to put before this Committee a short statement suggesting the quantum of representation which we want in the different Legislatures. Beyond that I do not think I am called upon to do anything; but the point I am anxious to make at the very outset is this. I have heard with great pleasure that further negotiations are going to take place for the settlement of the communal issue, but I would like to make this matter absolutely plain at the very start. I do not wish that any doubt should be left on this question at all. Those who are negotiating ought to understand that they are not plenipotentiaries at all; that whatever may be the representative character of Mr. Gandhi or the Congress people, they certainly are not in a position to bind us—certainly not. I say that most emphatically in this meeting.

Another thing I want to say is this—that the claims put forward by the various minorities are claims put forward by themselves irrespective of the consideration as to whether the claims that they have put forward are consistent with the claims of the other minorities. Consequently, any negotiations which take place between one minority on the one hand and the Congress or any other people for that matter on the other hand, without taking into consideration the claims which have been put forward by the other minorities,

can have no chance of success as far as I am concerned. I want to make that absolutely plain. I have no quarrel with the question whether any particular community should get weightage or not, but I do want to say most emphatically that whoever claims weightage and whoever is willing to give that weightage he must not give it—he cannot give it—out of my share. I want to make that absolutely plain.

Sir Henry Gidney : I want to say a very few words. I wholeheartedly associate myself with my friend Dr. Ambedkar. Representing a small community as I do, I fail to see where I come in in this transaction. If the Congress on the one hand makes a settlement with the Muhammadans on the other hand, where do the other minority communities come in? You ask us to settle our differences amongst ourselves and to present them individually. We have already done so. At the last Conference I submitted the minimum demands of the small community I represent. I want to make it abundantly clear that in making this new map of India all minorities should have the right of putting their own little spot on it, and I do not see how we can if the settlement here is going to be entirely a Hindu-Muslim pact.

A Member : Why do you assume that?

Sir Henry Gidney : The other minorities represent nearly 60,000,000, and if we are on the one hand to make this agreement between the Hindus and the Muhammadans, and on the other hand if the other minority communities are to set their own little houses in order, how do we come together? Who will decide? Will the Government decide and come to a compact with us?

Chairman : I want you to decide with them.

Sir Henry Gidney : With ourselves?

Chairman : With the whole lot of us.

Sir Henry Gidney : If there is going to be a settlement between the Hindus and the Muhammadans I think the other minorities should be represented. We cannot have a settlement of that question alone and have them making concessions to each other at our expense. We have not only to consider the Hindus and Muhammadans but the Princes, who come into this matter also. In other words, if you take the rupee, as it were, and divide 15 annas 9 pies amongst yourselves and leave 3 pies for the minorities to scramble for, that will not be just.

Chairman : Do not let there be any misunderstanding. This is the body before which the final settlement must come, and the suggestion is merely that if there are minorities or communities that hitherto have been in conflict with each other, they should use a short time for the purpose of trying to overcome their difficulties. That will be a step, and a very important and essential step, towards a general agreement, but the agreement is going to be a general one.

Dr. Ambedkar : I have made my position absolutely clear.

Chairman : Dr. Ambedkar's position has been made absolutely clear; in his usual splendid way he has left no doubt at all about it, and that will come up when this body resumes its discussions. What I would like to do is to get you all to feel that we are co-operating together for a general settlement; not for a settlement between any two or any three, but a complete settlement.

Sardar Ujjal Singh : I should like to say a few words. The question with which we are faced is the solution of the minorities problem. It is not a question that concerns Hindus and Muhammadans only; it is the question of how the various minorities are to be protected in the new constitution. If the Hindus and the Muhammadans are going to negotiate, they cannot negotiate for all the minorities; nor are the Muhammadans a minority in all the Provinces. Taking India as a whole the Muhammadans are certainly a very strong minority, but there are three or four other minorities—the Sikhs, the Europeans, the Christians and the Depressed Classes—whose rights have got to be equally protected.

Another point that has got to be borne in mind is that in the Federal constitution that we are going to evolve the Provinces will have very extensive powers and the control of the Central Government will be largely relaxed, so that the real problem will be within the Provinces—the problem of the majorities and minorities in the various autonomous Provinces.

Take, for example, the Punjab. The question there would not be that of a Hindu majority and a Muslim minority; it is a question of a Muslim majority and a Sikh minority. The question ought therefore to be faced and tackled from that point of view. It will not bring a solution nearer if the Hindus and the Muhammadans alone are to negotiate. They cannot negotiate for all the minorities nor can the settlement be arrived at without adjusting the claims of other important minorities.

I welcome the adjournment, but I do impress on this Committee that that adjournment period should be utilised and could very well be utilised by the representatives of the various minorities also taking part in the negotiations which are to be conducted. That is the only way of arriving at a complete settlement if it is intended that the settlement should be acceptable to all concerned. If this is not done, you will be creating suspicion in the minds of the various minorities. I need only say very modestly that no agreement will be acceptable to the Sikhs to which they do not become a party by securing what they consider the minimum for self-preservation.

With these few words I welcome the adjournment, but I repeat that it ought to be utilised in the proper manner.

Chairman : The position is this. We will adjourn now, I think, and later continue our meetings. Pending any negotiations that may be going on between any two or any three of you, we can take up the time in listening to a statement of the claims of the other minorities. I think that would be very useful. It would save time, and it would not mar the possibility of any harmony that may be

reached between, say, our Sikh friends—who, we know, can look after themselves with a great deal of persistence—Mr. Gandhi and his friends, and the Aga Khan and his.

But do, my friends, go away from this meeting now with a spirit of determination to settle this problem. Determine that this is going to be settled and that it is not going to be a mere rival fight ending in nothing.

If you will agree to adjourn now, in the meantime will you be good enough to send in names which I will call at the next meeting, and in the meantime the various negotiations can be continued? The question is when our next meeting shall be.

Dr. Ambedkar : I should like to suggest whether it would not be possible for you to appoint a small Committee consisting of members drawn from the various minority communities, along with the Congress representatives, to sit in an informal manner and discuss this problem during the period of the adjournment.

Chairman : I was going to make this suggestion. Do not ask *me* to appoint that Committee; do it yourselves. I have invited you to get together. Could not you manage to hold an informal meeting amongst yourselves and talk the matter over, and then when you speak here you will speak with some sort of knowledge of the effect of what you are saying on others? Could we leave it in that way?

Dr. Ambedkar : As you like.

Chairman : That would be far better.

(The Committee adjourned at 12-35 p.m.)

PROCEEDINGS OF THE EIGHTH MEETING OF THE MINORITIES COMMITTEE HELD ON THURSDAY, 1ST OCTOBER, 1931, AT 11.0 A.M.

Mr. Gandhi : Prime Minister, after consultation with His Highness The Aga Khan and other Muslim friends last night, we came to the conclusion that the purpose for which we meet here would be better served if a week's adjournment was asked for. I have not had the opportunity of consulting my other colleagues, but I have no doubt that they will also agree in the proposal I am making. I have been having with my Muslim friends anxious conversations, and I had the pleasure of meeting some other friends also last afternoon belonging to the different groups or classes. We were not able to make much headway, but they too felt that the time at our disposal was too short even for exchanging views. I may say for myself that beyond this week's adjournment I would not press for any further adjournment, but I would report to this Committee what has been the result of the endeavour I shall be making during the week.

I let out no secret when I inform this Committee that His Highness and the other friends with whom I was closeted last night laid

upon my shoulders the burden of calling representatives of the different groups together and holding consultations with a view to arriving at some final settlement. If this proposal of mine commends itself to you, Prime Minister, and to the rest of the members of this Committee, I shall be glad. I know that His Highness will second this proposal, and let us all hope that at the end of the week it will be possible to report some sort of a settlement.

When I express this hope I do not wish to convey any impression that, because I express it, there is something that I know, and on which I am building that hope. But I am an irrepressible optimist, and often in my lifetime when the horizon has appeared to be the blackest, some turn has taken place which has given good ground for hope. Whatever it may be, so far as human endeavour is possible, all that endeavour will be made, I have no doubt, by many members of this Committee to arrive at a settlement.

With these words I leave my proposal, that we adjourn our proceedings to this day week, in your hands for consideration.

H.H. The Aga Khan : I have pleasure in seconding the proposal.

Sardar Ujjal Singh : I rise to give my whole-hearted support to this proposal, and I share the hope that by this means we may come to some understanding, given good will on both sides.

Dr. Ambedkar : I do not wish to create any difficulty in our making every possible attempt to arrive at some solution of the problem with which this Committee has to deal, and if a solution can be arrived at by the means suggested by Mahatma Gandhi, I, for one, will have no objection to that proposal.

But there is just this one difficulty with which I, as representing the Depressed Classes, am faced. I do not know what sort of committee Mahatma Gandhi proposes to appoint to consider this question during the period of adjournment, but I suppose that the Depressed Classes will be represented on this committee.

Mr. Gandhi : Without doubt.

Dr. Ambedkar : Thank you. But I do not know whether in the position in which I am to-day it would be of any use for me or my colleague to work on the proposed committee. And for this reason. Mahatma Gandhi told us on the first day that he spoke in the Federal Structure Committee that as a representative of the Indian National Congress he was not prepared to give political recognition to any community other than the Muhammadans and the Sikhs. He was not prepared to recognise the Anglo-Indians, the Depressed Classes, and the Indian Christians. I do not think that I am doing any violence to etiquette by stating in this Committee that when I had the pleasure of meeting Mahatma Gandhi a week ago and discussing the question of the Depressed Classes with him, and when we, as members of the other minorities, had the chance of talking with him yesterday in his office, he told us in quite plain terms that the attitude that he had taken in the Federal Structure Committee was his full and well considered attitude.

What I would like to say is that unless at the outset I know that the Depressed Classes are going to be recognised as a community entitled to political recognition in the future constitution of India, I do not know whether it will serve any purpose for me to join the particular committee that is proposed by Mahatma Gandhi to be constituted to go into this matter. Unless, therefore, I have an assurance that this committee will start with the assumption that all those communities which the Minorities sub-Committee last year recommended as fit for recognition in the future constitution of India will be included, I do not know that I can whole-heartedly support the proposition for adjournment, or that I can whole-heartedly co-operate with the committee that is going to be nominated. That is all that I wish to make plain now.

Sir Henry Gidney : On behalf of the community which I have the honour to represent I associate myself entirely with my friend Dr. Ambedkar. I also am in the unfortunate position of having been refused recognition by Mahatma Gandhi as far as a separate community is concerned. I may be wrong, but I am sure that Mahatma Gandhi will correct me if I am. Yesterday, when we met Mahatma Gandhi upon this matter, he impressed us in terms that left no doubt in my mind that as a community he and the Congress were not prepared to recognise us, and that the Lahore Resolution of the Congress indicated, almost at the behest of the Mahatma, that it was only possible to recognise two communities, the Muhammadans and the Sikhs, and that that was on traditional and historical grounds. Possibly it might be impertinence on my part to claim the same grounds for the recognition of my community. But I do ask the Mahatma to make it abundantly clear here before this meeting, before this committee is appointed, and before you, Sir, ask for an adjournment, that he will include in this committee representatives of those communities which have already received recognition on this committee.

Rao Bahadur Pannir Selvam : The statement made by Dr. Ambedkar is news to me. I was not aware until now that the Mahatma was not granting us any recognition. If that be so, I submit that our position here will be absolutely unnecessary. Since no recognition as a community in the political future is given to us, I am really unable to see what purpose will be served by our taking part in any committee that might subsequently be formed. I feel that I ought to put forward my case exactly in the same terms as Dr. Ambedkar and Sir Henry Gidney have stated theirs.

Dr. Moonje : I did not attach much importance or so much seriousness to the fact when I read in the papers that only two communities are to be recognised by Mahatma Gandhi in the Minorities Committee. I thought that perhaps it might be a kind of move to facilitate conciliation and understanding, and to smooth over difficulties, but I find from Dr. Ambedkar's speech, and from Sir Henry Gidney's speech, that they have taken the matter most seriously. Therefore, I should like to say, and bring it to the notice of the Committee, that even the Hindus in the Provinces of Punjab

and Bengal are minorities, and have, therefore, to look after their own interests also. With this little explanation, I have no objection to the proposal of adjourning for considering this question.

Sir Muhammad Shafi : I am afraid there is some misapprehension in the minds of some of my friends about the proposal which has been put forward by Mahatma Gandhi. As I understand that proposal, Mahatma Gandhi does not ask for the appointment of a sub-committee of this Committee, nor does he ask for the appointment of a committee in the ordinary sense of the term. What is intended is this, that each group constituting the whole of this Committee, including of course the Depressed Classes and the Anglo-Indian community, might select a few representatives, one or two or three from each group, who should meet together and consider, after an exchange of ideas, whether some settlement satisfactory to all cannot be arrived at and thus lighten the burden which rests upon the shoulders of the Minorities Committee as a whole. If that consummation can be arrived at, I am sure every sincere well-wisher of India's peaceful progress ought to be glad to contribute to the bringing about of that consummation. I am afraid the objection made by my friend Dr. Ambedkar is merely the result of a misapprehension as to the nature of the proposal made by Mahatma Gandhi and seconded by His Highness The Aga Khan. If after this explanation which I have ventured to submit, a unanimous decision can be arrived at in favour of the adjournment of this Committee for a week in order to enable us all to meet in a friendly spirit, in a spirit of co-operation, as sincere well-wishers for peaceful progress in our common Motherland, I shall be very glad.

Mrs. Naidu : Mr. Prime Minister, as I do not represent either a minority or a special interest I am completely disinterested in the appeal I am going to make to the minorities and special interests not to raise difficulties and not to cross their bridges before they come to them. It is only in fulfilment of the appeal, Sir, which you made to us the other day, which coincides with our own sense of self-respect, with our own sense of duty in settling a domestic matter entirely without outside arbitration or intervention, that I want to make an appeal that we should settle our domestic quarrels, if there are any, and announce to you a reconciliation, if there must be a reconciliation, but at any rate a harmonious result, and I think that is the reason why Mahatma Gandhi has made this motion for an adjournment. I do not think that any single minority, however small, need have any apprehension. Every minority is as much a part of the nation as every majority, and I, for one, pledge myself to follow the exhortation given to me by one of the greatest statesmen in Europe, whose boast is that he built up an independent nation without an army and without money. He said to me two years ago: "Madame, keep your minorities happy; you cannot build a nation without giving a sense of security to your minorities;" and it is because we want to give this sense of security to the minorities and make them feel that

they are an integral part of the nation that a majority community, speaking through the mouth of Mahatma Gandhi, and, if I may say so, also a majority community, speaking through the mouth of His Highness The Aga Khan, are making an appeal that we shall not bring our small domestic quarrels before those who are not concerned primarily with them, but that we shall settle them ourselves, with equity, magnanimity and a sense of chivalry which is justice, and a sense of self-respect which does not permit outsiders to know of the differences within our own house.

That is my appeal, Prime Minister, and I hope it will be accepted by all the minorities and majorities present.

Dr. Ambedkar : I should like to make my position further clear. It seems that there has been a certain misunderstanding regarding what I said. It is not that I object to adjournment; it is not that I object to serving on any committee that might be appointed to consider the question. What I would like to know before I enter upon this committee, if they give me the privilege of serving on it, is: What is the thing that this committee is going to consider? Is it only going to consider the question of the Muhammadans *vis-à-vis* the Hindus? Is it going to consider the question of the Muhammadans *vis-à-vis* the Sikhs in the Punjab? Or is it going to consider the question of the Sikhs *vis-à-vis* the Hindus? Is it going to consider the question of the Christians, the Anglo-Indians and the Depressed Classes?

If we understand perfectly well before we start that this committee will not merely concern itself with the question of the Hindus and the Muhammadans, of the Hindus and the Sikhs, but will also take upon itself the responsibility of considering the Depressed Classes, the Anglo-Indians and the Christians, I am perfectly willing to allow this adjournment resolution to be passed without my protest. But I do want to say this, that if I am to be left out in the cold, and if this interval is going to be utilised for the purpose of solving the Hindu-Muslim question and the Hindu-Sikh question, I would press that this Committee should at once grapple with the question and consider it, rather than allow both positions to be taken hold of by somebody else.

Mr. Gandhi : Prime Minister and friends, I see that there is some kind of misunderstanding with reference to the scope of the work that some of us have set before ourselves. I fear that Dr. Ambedkar, Colonel Gidney and other friends are unnecessarily nervous about what is going to happen. Who am I to deny political status to any single interest or class or even individual in India? As a representative of the Congress I should be unworthy of the trust that has been reposed in me by the Congress if I were guilty of sacrificing a single national interest. I have undoubtedly given expression to my own views on these points. I must confess that I hold to those views also. But there are ways and ways of guaranteeing protection to every single interest. It will be for those of us who will be putting our heads together to try to evolve a scheme. Nobody would be hampered in pressing his own views on the

members of this very informal conference or meeting. We need not call it a committee. I have no authority to convene any committee or to bring into being a committee. I can only act as a humble messenger of peace, try to get together representatives of different interests and groups, and see whether, by being closeted in one room and by heart-to-heart conversation, we may not be able to remove cobwebs of misunderstanding and see our way clear to the goal that lies so hazily before us to-day.

I do not think, therefore, that anybody need be afraid as to being able to express his opinion, or carrying his opinion also. Mine will be there equal to that of everyone of us; it will carry no greater weight; I have no authority behind me to carry my opinion against the opinion of anybody. I have simply given expression to my views in the national interest, and I shall give expression to these views whenever they are opportune. It will be for you, it is for you to reject or accept those opinions. Therefore please disabuse your minds, everyone of us, of the idea that there is going to be any steam-rolling in the Conference and the informal meetings that I have adumbrated. But if you think that this is one way of coming closer together than by sitting stiffly at this table, you will not only carry this adjournment motion, but give your wholehearted co-operation to the proposal that I have made in connection with these informal meetings.

Sir Hubert Carr : Mr. Prime Minister, my community has not been mentioned. It is a very small one; but I would like to say that we welcome an adjournment or any other means which will assist a solution of this question which we recognise must precede the final consideration of other questions in which we are all vitally interested.

Dr. Datta : May I say I welcome this adjournment.

Chairman : Then I shall proceed to put it. I put it on the clear understanding, my friends, that the time is not going to be wasted, and that these conferences—as Mr. Gandhi has said, informal conferences, but nevertheless I hope very valuable and fruitful conferences—will take place between now and our next meeting. I hope you will all pledge yourselves to use the time in that way.

(The Committee adjourned at 11-28 a.m.)

PROCEEDINGS OF THE NINTH MEETING OF THE MINORITIES COMMITTEE HELD ON THURSDAY, 8TH OCTOBER, 1931, AT 11 A.M.

Chairman : When we met last Thursday, by common consent we adjourned for a week in order to enable informal and unofficial consultations to take place, with a view of coming to an agreement. Perhaps our first business is to receive a report from those who conducted the negotiations. May I ask Mr. Gandhi to speak first?

Mr. Gandhi : Prime Minister and friends, it is with deep sorrow and deeper humiliation that I have to announce utter failure on my part to secure an agreed solution of the communal question

through informal conversations among and with the representatives of different groups. I apologise to you, Mr. Prime Minister, and the other colleagues for the waste of a precious week. My only consolation lies in the fact that when I accepted the burden of carrying on these talks I knew that there was not much hope of success, and still more in the fact that I am not aware of having spared any effort to reach a solution.

But to say that the conversations have to our utter shame failed is not to say the whole truth. Causes of failure were inherent in the composition of the Indian Delegation. We are almost all not elected representatives of the parties or groups whom we are presumed to represent; we are here by nomination of the Government. Nor are those whose presence was absolutely necessary for an agreed solution to be found here. Further, you will allow me to say that this was hardly the time to summon the Minorities Committee. It lacks the sense of reality in that we do not know what it is that we are going to get. If we knew in a definite manner that we were going to get the thing we want, we should hesitate fifty times before we threw it away in a sinful wrangle, as it would be if we are told that the getting of it would depend upon the ability of the present Delegation to produce an agreed solution of the communal tangle. The solution can be the crown of the Swaraj constitution, not its foundation—if only because our differences have hardened, if they have not arisen, by reason of the foreign domination. I have not a shadow of a doubt that the iceberg of communal differences will melt under the warmth of the sun of freedom.

I, therefore, venture to suggest that the Minorities Committee be adjourned *sine die* and that the fundamentals of the constitution be hammered into shape as quickly as may be. Meanwhile, the informal work of discovering a true solution of the communal problem will and must continue; only it must not baulk or be allowed to block the progress of constitution-building. Attention must be diverted from it and concentrated on the main part of the structure.

I hardly need point out to the Committee that my failure does not mean the end of all hope of arriving at an agreed solution. My failure does not even mean my utter defeat; there is no such word in my dictionary. My confession merely means failure of the special effort for which I presumed to ask for a week's indulgence, which you so generously gave.

I propose to use the failure as a stepping-stone to success, and I invite you all to do likewise; but, should all effort at agreement fail, even when the Round Table Conference reaches the end of its labours, I would suggest the addition of a clause to the expected constitution appointing a judicial tribunal that would examine all claims and give its final decision on all the points that may be left unsettled.

Nor need this Committee think that the time given for enabling informal conversations to be carried on has been altogether wasted. You will be glad to learn that many friends not members of the Delegation have been giving their attention to the question.

Among these I would mention Sir Geoffrey Corbett. He has produced a scheme of redistribution of the Punjab which, though it has not found acceptance, is, in my opinion, well worth studying. I am asking Sir Geoffrey if he will kindly elaborate and circulate it among the members. Our Sikh colleagues have also produced another, which is at least worthy of study. Sir Hubert Carr produced last night an ingenious and novel proposal to set up for the Punjab two Legislatures, the lower to satisfy the Muslim claim and the upper nearly satisfying the Sikh claim. Though I am no believer in a bicameral Legislature, I am much attracted by Sir Hubert's proposal, and I would invite him to pursue it further with the same zeal with which, I gratefully admit, he followed and contributed to the informal deliberations.

Lastly, inasmuch as the only reason for my appearance at these deliberations is that I represent the Indian National Congress, I must clearly set forth its position. In spite of appearances to the contrary, especially in England, the Congress claims to represent the whole nation, and most decidedly the dumb millions, among whom are included the numberless Untouchables, who are more suppressed than depressed, as also in a way the more unfortunate and neglected classes known as Backward Races.

Here is the Congress position in a nutshell. I am reading the Congress resolution on the subject. However much it may have failed in the realisation, the Congress has, since its inception, set up pure nationalism as its ideal. It has endeavoured to break down communal barriers. The following Lahore resolution was the culminating point in its advance towards nationalism. In view of the lapse of the Nehru Report it is unnecessary to declare the policy of the Congress regarding communal questions:—

> "The Congress believing that in an independent India communal questions can only be solved on strictly national lines; but as the Sikhs in particular, and the Muslims and the other minorities in general, have expressed dissatisfaction over the solution of communal questions, proposed in the Nehru Report, this Congress assures the Sikhs, the Muslims and other minorities that no solution thereof in any future constitution will be acceptable to the Congress that does not give full satisfaction to the parties concerned."

Hence the Congress is precluded from setting forth any communal solution of the communal problem, but at this critical juncture in the history of the nation it was felt that the Working Committee should suggest for adoption by the country a solution, though communal in appearance, yet as nearly national as possible, and generally acceptable to the communities concerned. The Working Committee, therefore, after full and free discussion, unanimously passed the following scheme:—

> "1. (*a*) The article in the constitution relating to fundamental rights shall include a guarantee to the communities concerned of the protection of their cultures, languages,

scripts, education, profession and practice of religion and religious endowments;

(*b*) Personal laws shall be protected by specific provisions to be embodied in the constitution;

(*c*) Protection of political and other rights of minority communities in the various Provinces shall be the concern and be within the jurisdiction of the Federal Government."

2. The Franchise shall be extended to all adult men and women—"

and then there is a note to this:—

" The Working Committee is committed to adult franchise by the Karachi resolution of the Congress, and cannot entertain any alternative franchise. In view, however, of misapprehensions in some quarters, the Committee wishes to make it clear that in any event the franchise shall be uniform and so extensive as to reflect in the electoral roll the proportion in the population of every community.

3. (*a*) Joint electorates shall form the basis of representation in the future constitution of India; (*b*) That for the Hindus in Sind, the Muslims in Assam and the Sikhs in the Punjab and North-West Frontier Province, and for Hindus and Muslims in any Province where they are less than 25 per cent. of the population, seats shall be reserved in the Federal and Provincial Legislatures on the basis of population, with the right to contest additional seats.

4. The appointments shall be made by non-Party Public Service Commissions, which shall prescribe the minimum qualifications, and which shall have due regard to the efficiency of the public service as well as to the principle of equal opportunity to all communities for a fair share in the Public Services of the country.

5. In the formation of Federal and Provincial Cabinets, the interests of minority communities shall be recognised by convention. The North-West Frontier Province and Baluchistan shall have the same form of government and administration as other Provinces.

7. Sind shall be constituted into a separate Province provided that the people of Sind are prepared to bear the financial burden of the separated Province.

8. The future constitution of the country shall be Federal. The residuary powers shall vest in the federating units unless on further examination it is found to be against the best interest of India.

The Working Committee has adopted the foregoing scheme as a compromise between the proposals based on undiluted communalism and undiluted nationalism. Whilst on the one hand the Working Committee hopes that the whole nation will endorse the scheme, on the other it assures those

who take extreme views and cannot adopt it, that the Committee will gladly, as it is bound to by the Lahore Resolution, accept without reservation any other scheme if it commands the acceptance of all the parties concerned."

That is the Congress resolution.

If, however, a national solution is impossible and the Congress scheme proves unacceptable, I am not precluded from endorsing any other reasonable scheme which may be acceptable to the parties concerned. The Congress position on this question therefore is one of the greatest possible accommodation. Where it cannot help it will not obstruct. Needless to say the Congress will whole-heartedly support any scheme of private arbitration. It seems to have been represented that I am opposed to any representation of the Untouchables on the Legislature. This is a travesty of the truth. What I have said, and what I must repeat, is that I am opposed to their special representation. I am convinced that it can do them no good, and may do much harm; but the Congress is wedded to adult franchise. Therefore millions of them can be placed on the Voters' Roll. It is impossible to conceive that, with untouchability fast disappearing, nominees of these voters can be boycotted by the others; but what these people need more than election to the Legislatures is protection from social and religious persecution. Custom, which is often more powerful than law, has brought them to a degradation of which every thinking Hindu has need to feel ashamed and to do penance. I should, therefore, have the most drastic legislation rendering criminal all the special persecution to which these fellow-countrymen of mine are subjected by the so-called superior classes. Thank God, the conscience of Hindus has been stirred, and untouchability will soon be a relic of our sinful past.

Sir Muhammad Shafi : Prime Minister, I am sure every one of the Indian representatives on this Committee shares the humiliation and sorrow to which Mahatma Gandhi has given expression as a result of the breakdown of the discussions and negotiations which have been going on during the last week with a view, if possible, to arrive at an amicable settlement of the communal problem. I desire on behalf of the Muslim Delegation to bear testimony to the indefatigable efforts which Mahatma Gandhi has made in order to bring about such a settlement. Indeed he has spared no effort, to quote his own language, in order to achieve that consummation; but it is unfortunate that his efforts, and those of other members of the informal committee who have striven to their utmost to bring about such a settlement, have ended in failure.

Mahatma Gandhi has expressed it as his opinion this morning that the failure is due to the constitution of the British Indian Delegation, inasmuch as the members of the British Indian Delegation, according to him, were nominated by Government and not elected by the people. With all respect to Mahatma Gandhi, I entirely dissent from that proposition. It is well known to you all that there are four great political parties in India; the Indian National Congress, the Hindu Mahasabha, the Liberal Federation

and the Muslim Community. We have present here at this Conference Mahatma Gandhi himself whom the Working Committee of the Indian National Congress have appointed as their sole Delegate. So that the Indian National Congress is fully represented in this Committee. We have the founder of the All-India Hindu Mahasabha in the person of Pandit Madan Mohan Malaviya as a member of this Committee.

Sir A. P. Patro : Is that a political body or a religious association?

Sir Muhammad Shafi : It is a political body.

Pandit M. M. Malaviya : I am not the founder of it.

Sir Muhammad Shafi : We have also the working President of that organisation, Dr. Moonje, and an *ex*-President of that organisation, Raja Narendra Nath, present here in the Minorities Committee.

Coming to the Liberal Federation, almost all the prominent members and office bearers of that organisation are present here as members of the British Indian Delegation.

So far as the Muslim community is concerned, you have the President of the Khilafat Conference, the President of the All-India Muslim League, the President of the All-India Muslim Conference, and office bearers of all the other various Muslim organisations present as members of the British Indian Delegation. You have also the gentleman who presided over a party which has recently come into being in India, the Muslim Nationalist Party. You have the President of the Conference of that Party held in Lucknow present here as a member of the British Indian Delegation.

To say, therefore, that it is only Government nominees who are members of the British Indian Delegation is, I venture to submit, to put forward a proposition which will not bear examination. The leaders of all the various political parties in India are members of the Round Table Conference, and they were nominated by the Government of India after consultation with the Working Committees and Executives of these various organisations.

In these circumstances, I venture to submit that the British Indian Delegation is thoroughly representative of the peoples of India; and if, in spite of this fact, we have not been able to arrive at an amicable settlement of the communal problem, all I can say is this, that the sense of humiliation and sorrow to which Mahatma Gandhi has given expression has gone deep into the hearts of some of us. It is heart-breaking indeed that in spite of the efforts made by those who firmly believe that the future of India rests entirely upon Hindu-Muslim unity, upon a satisfactory settlement of the communal problem and a settlement of the Minorities question in India, we should not have been able to arrive at an agreement, and we most deeply regret this breakdown. That is all I have to say with reference to this part of the observations made by Mahatma Gandhi.

Then Mahatma Gandhi suggested that a clause should be introduced in the constitution providing for the appointment of a judicial tribunal to decide questions which are left undecided. If Mahatma Gandhi contemplates that the question of the settlement of the communal problem also should be referred to that tribunal, I venture to submit that he is ignoring one vital factor in the whole case. When he says that the constitution should include a clause, does he realise that it is impossible to frame a constitution for India without first settling the various communal problems involved? If I may liken the work of the Federal Structure Committee to the forging of a chain, then what I would say is this. Many of the links of this chain—indeed, some of the most important of the links of this chain—are dependent upon the solution of the communal problem. Without a solution of the communal problem the chain cannot be forged, and in consequence it is impossible to frame a constitution without settling the communal problem.

Then Mahatma Gandhi referred to a solution of the Punjab problem suggested by Sir Geoffrey Corbett, and to a solution also suggested last night by Sir Hubert Carr. We on this side are perfectly willing to examine those solutions.

In so far as the solution suggested by Sardar Ujjal Singh is concerned, it includes, amongst some of the suggestions made, the handing over of the Multan and Rawalpindi Divisions to the North-West Frontier Province—that is to say, that the North-Western and South-Western Punjab, instead of going ahead in this scheme of constitutional evolution which we contemplate, should be handed over to the North-West Frontier Province.

I do not wish to add anything further.

Sardar Ujjal Singh : It is not quite correct. I would rather present that scheme so that it might form part of the proceedings. It might be circulated to the members of the Committee.

Sir Muhammad Shafi : If I had made a misstatement, or if I have not understood his proposals correctly, my learned friend would be perfectly justified in getting up and correcting me; but if I am right in saying that his scheme contemplates the handing over of the North-Western and South-Western Punjab—that is to say, the Rawalpindi Division and the Multan Division—to the North-West Frontier Province, then I think every member of this Committee will see immediately that the Muhammadans of the Punjab are not likely to accept such a proposal as that. I need say nothing further with regard to these schemes.

Then Mahatma Gandhi went on to read the Congress resolution on the settlement of communal questions. I need only say that the Congress resolution read out to us this morning has already met with the fate of the Nehru Report. It has been rejected by the Hindus of the Punjab, has been rejected by the Sikhs, has been rejected by the Muslim community; so it is no use referring to that resolution here.

Then Mahatma Gandhi further stated that the Congress will whole-heartedly support any scheme of arbitration. Now, that is an observation made by Mahatma Gandhi of which I must take note. I wish to remind the members of the Minorities Committee of the speech delivered by the Prime Minister at the conclusion of the last Session of the Round Table Conference. During the course of that speech the Prime Minister observed as follows:—

> "Then there is the third category of safeguards, relating to communities. Now I repeat what I have said to you so often regarding that: if you fail to agree to set up your own safeguards, to come to a settlement between yourselves regarding those safeguards, the Government will have to provide in the constitution provisions designed to help you."

I venture to submit that there is only one course open after this breakdown of the negotiations and discussions, and that is that this Committee ought to go ahead. We who are convinced that the future of India lies within the British Commonwealth of Nations are not willing to accept the arbitration of any outsider. His Majesty's Government as the head of that Commonwealth are the judges who are in the best of positions to decide the question, and we are perfectly willing that they should be the judges of this question. Indeed, constitutionally it is His Majesty's Government and the British Parliament which will have to undertake the responsibility of deciding this question along with the other questions relating to constitutional evolution in India.

Lastly, the Muslim Delegation is not prepared to agree to the proposal made by Mahatma Gandhi that the proceedings of this Committee should be adjourned *sine die* and that the work of constitution-building in the Federal Structure Committee should go on. We hold that it is impossible to carry on that work in the Federal Structure Committee without concluding the work of the Minorities Committee. As I have said, the links which remain to be forged in that Committee are all dependent upon the solution of the communal problem. To give but one illustration: There is the question of responsibility in the Centre. As I said in the concluding paragraph of my speech before this very Committee at an earlier stage, if the communal problem is not settled, to whom is the British Government to transfer responsibility? To the Hindus? Then the Muslims will object. To the Muslims? Then the Hindus will object; and unless and until the minorities are satisfied—all minorities, Depressed Classes, Europeans, Anglo-Indians and Christians—that their vital interests have been adequately safeguarded as a result of the deliberations of this Committee, how can you expect them to agree to the transfer of responsibility?

I venture to suggest that the proposal made by Mahatma Gandhi—that this Committee should adjourn *sine die*—is not acceptable on any grounds, and in consequence I am instructed by the Muslim Delegation to oppose it.

Sir A. P. Patro : Mr. Prime Minister, I tremble to speak on this occasion after the speech of Sir Muhammad Shafi; I feel so

diffident. I feel that after all these direct and distinct assertions it would be futile for me to attempt to throw oil over the troubled waters. It has been my painful duty since 1929 to attempt to assist as far as I could in the solution of this problem. It is painfully disappointing to see that we have failed. Last year I appealed to all the Delegates and said the time had come when His Majesty's Government should undertake the responsibility of solving this problem. High hopes were roused in me when Mahatma Gandhi was sailing to take part in this Conference. I realise, as everyone here round this table and outside realises, that, with his great moral force and his great personality, however much we differ from his politics, he was the only person that would be able to adjust and solve this very difficult problem, the communal problem. I heard him with great respect when I met him in private and in public and was impressed with his great earnestness and sincerity for the solution of this problem. We have failed; it is a great misfortune; but as a practical worker I do not feel despondent and I do not despair. If we have failed now in solving this problem, what is it that we can do next?

It seems to me there are two ways in which we can pursue this problem. I suggested last year that it should be taken up by His Majesty's Government on the basis of the recommendations of the Government of India Despatch, and that they should proceed with the work—not that they should impose any solution upon us, but that they should solve the problem equitably and leave it to the various Provinces to understand the position in which they would be situated. In other words it should be a solution which will be acceptable to most people. No solution which His Majesty's Government or anyone else may make will be acceptable to all sections. It is so with regard to every political problem. We see the same position in regard to European nationalities; we find it the same here also in this great country. Therefore the fact that it will rouse opposition from certain quarters need not deter His Majesty's Government from taking courage to solve this problem in the light of the information that is available to them and in the light of the great volume of evidence that is before them. That is one method which I have suggested and which I again repeat with all respect. I know the disadvantage at which I am placing the Government in asking them to undertake such a responsibility and such a serious task; but the British Government has undertaken more serious responsibilities in regard to the administration of India in laying down policies for the Government of India. Therefore the Home Government need not hesitate to undertake this responsibility. That is especially so in the light of what His Excellency the Viceroy has said. On the 30th October, 1929, he said that the end of the constitutional issue is the attainment of Dominion Status for India.

The Secretary of State has repeated it and has said that India is already enjoying Dominion Status. In the light of these assurances given to the people of India we claim that it is the duty of

His Majesty's Government to take up this responsibility, however unpleasant it may be for the time being. There must be change in the Centre immediately.

Then there is a second solution which I would venture to place before this Committee. When we failed to achieve a solution, Mahatma Gandhi said that the composition of this Committee is such that it did not assist in the matter of solving this problem. I consider that it may be so in the sense that all the Delegates from different Provinces were clubbed together, and each section and each Province and community was trying to force its own problems upon the whole body. In other words, until the small hours of this morning we were occupied with the problem of the Punjab. Sir Muhammad Shafi is so much obsessed with the problem of the Punjab that he thought there were only four political parties in India, including his own, the Mahasabha and others. He forgot other Provinces and the conditions which exist elsewhere. It is pardonable on his part that, being occupied so much with Punjab affairs, he should forget the conditions prevailing in other Provinces and the parties there which have been working on constitutional methods.

Sir Muhammad Shafi : I admit my mistake.

Sir A. P. Patro : I am glad he acknowledges the mistake—the very serious mistake—he made in claiming that there were only four parties in India.

The point which I am placing before you for serious consideration is that, as Mahatma Gandhi said, the composition of this Committee is such that it has placed particular provincial and parochial interests above the interests of all India, and therefore Indian nationalism could not easily find expression in the deliberations of this Committee.

What is it, therefore, that we ought to do in order to overcome these difficulties? When we have got a full scheme of provincial autonomy and federation together worked out by the British Government, and when both for the Provinces and the Centre the scheme is ready, the former may be referred to the Provinces in each case, and the Provinces may form small conferences or committees of representatives in order to solve the difficulties relating to themselves. I find it has been a great mistake on the part of the British Government and of British policy to attempt to achieve uniformity of policy, uniformity of action, and uniformity of administration throughout the whole of India. Conditions in Provinces differ radically in many respects. You cannot, therefore, impose one particular form of government, one particular scheme, that will be suitable for the whole of India. You must, therefore, take the Provinces, Province by Province, and ask them to form small conferences, representative of all interests and of all communities, to come to an understanding on the communal problem and on the constitutional problem. From this Central responsibility becomes inevitable.

When once you invite representatives of the various communities and interests to meet in conference, you must not allow these conferences to be again divided. There should be one vote for each interest and one vote for each community, and in that way, whatever may be the number and the composition of these conferences, you would have this one principle, namely, that each community and each interest will have one vote, and thereby an agreed scheme may be very possible.

Whenever a Province comes to an agreed scheme, both in the matter of communities and in the matter of the constitution, that scheme will naturally be examined by the Government of the Province, and when it has made its remarks it will be forwarded to Parliament, and Parliament must be in a position to confirm or endorse such scheme. The agreed scheme of the people must be endorsed by Parliament; that is to say, the scheme which the British Government would outline to us now and immediately, both in regard to the Provinces and in the Centre, must fit in with that of the people, and Parliament will be in a position to endorse it.

There will be, therefore, as Mahatma Gandhi has said, full agreement with all interests and parties in the Provinces. When there is that full agreement according to the Congress constitution expressed by the people in this Conference, and when it is agreed to by the Provincial Governments, there is no danger of such a scheme or such a proposal being in any way detrimental to the working of the constitution. Then if each Province has worked out its own scheme, has solved its communal and other problems in a way suitable to the genius of the people themselves suitable to the economic and political conditions of the people, then there will be no difficulty whatever. Simultaneously, therefore, the whole of the Federal scheme will have to continue to be worked. The Federation of the rest of India must not wait until this re-organisation is completed. There should be no delay in beginning the work of the Federation. It may take time. The whole Federation of India is something unique. It is unprecedented. We cannot copy merely from either the Constitution of Canada or from the Constitution of Australia; but once the principle of Federation has been accepted we shall have to fill in all the details when we see the practical difficulties in the working of the Federal constitution. That will take a long time, and therefore what I want to suggest is, go ahead with the scheme of Federation in the Centre, go ahead with the scheme of Provincial autonomy, work out the scheme of Provincial autonomy, work out the scheme for the Centre. It may take time for the Centre—two or three years—but as some of us suggested to the Prime Minister on the last occasion, it is not wise to delay giving full responsibility in the Provinces immediately. So you will see that responsibility in the Centre will begin in course of time, and at the same time the scheme will be worked in the Centre. It will not be delayed. Then once you have got Provincial representation, you cannot delay any longer the introduction of full responsibility in the Centre as we claim. In the meanwhile the

recommendations of the Government of India must be enforced in the Centre. It is an essential part of any proposal.

Therefore it seems to me that there is no reason for despairing because we have not been able to adjust the communal problem. You can leave it to the conference, which will be better composed of the Provincial delegates, and when those delegates come to a solution of the problem it should be within the power of His Majesty's Government to give sanction to it by Order or by Resolution in the Houses of Parliament. If this is done a great deal of the communal trouble will disappear, and I venture to say respectfully, that it will not at all be in opposition to the scheme which the Congress has adumbrated. However much we may differ from other parts, this part, namely the agreed settlement, would be achieved both in the Provinces and in the Centre.

Therefore I suggest that either His Majesty's Government should take up the solution of the problem, or that we should leave it to the Provinces and to the Federal Assembly in the Centre. Side by side, simultaneously, these two things should go on, and when that is done it seems to me that the problem will be freed from its most difficult aspects.

Dr. Ambedkar : Mr. Prime Minister, last night when we parted at the conclusion of the meeting of the informal Committee we parted, although with a sense of failure, at least with one common understanding, and that was that when we met here to-day none of us should make any speech or any comment that would cause exasperation. I am sorry to see that Mr. Gandhi should have been guilty of a breach of this understanding. Excuse me, I must have the opportunity to speak. He started by giving what were, according to him, the causes of the failure of the informal Committee. Now, I have my own causes which I think were responsible for the failure of the informal Committee to reach an agreement, but I do not propose to discuss them now. What disturbs me after hearing Mr. Gandhi is that instead of confining himself to his proposition, namely, that the Minorities Committee should adjourn *sine die*, he started casting certain reflections upon the representatives of the different communities who are sitting round this table. He said that the Delegates were nominees of the Government, and that they did not represent the views of their respective communities for whom they stood. We cannot deny the allegation that we are nominees of the Government, but, speaking for myself, I have not the slightest doubt that even if the Depressed Classes of India were given the chance of electing their representatives to this Conference, I would, all the same, find a place here. I say therefore that, whether I am a nominee or not, I fully represent the claims of my community. Let no man be under any mistaken impression as regards that.

The Mahatma has been always claiming that the Congress stands for the Depressed Classes, and that the Congress represents the Depressed Classes more than I or my colleague can do. To that claim I can only say that it is one of the many false claims which

irresponsible people keep on making, although the persons concerned with regard to those claims have been invariably denying them.

I have here a telegram which I have just received from a place which I have never visited and from a man whom I have never seen—from the President of the Depressed Classes Union, Kumaun, Almora, which I believe is in the United Provinces, and which contains the following resolution:—

> "This Meeting declares its no-confidence in the Congress movement which has been carried on in and outside the country, and condemns the methods adopted by the Congress workers."

I do not care to read further, but I can say this (and I think if Mr. Gandhi will examine his position he will find out the truth), that although there may be people in the Congress who may be showing sympathy towards the Depressed Classes, the Depressed Classes are not in the Congress. That is a proposition which I propose to subtantiate. I do not wish to enter into these points of controversy. They seem to be somewhat outside the main proposition. The main proposition which Mr. Gandhi has made is that this Committee should be adjourned *sine die*. With regard to that proposition, I entirely agree with the attitude taken up by Sir Muhammad Shafi. I, for one, cannot consent to this proposition. It seems to me that there are only two alternatives—either that this Minorities Committee should go on tackling the problem and trying to arrive at some satisfactory solution, if that is possible, and then, if that is not possible, the British Government should undertake the solution of that problem. We cannot consent to leave this to the arbitration of third parties whose sense of responsibility may not be the same as must be the sense of responsibility of the British Government.

Prime Minister, permit me to make one thing clear. The Depressed Classes are not anxious, they are not clamorous, they have not started any movement for claiming that there shall be an immediate transfer of power from the British to the Indian people. They have their particular grievances against the British people and I think I have voiced them sufficiently to make it clear that we feel those grievances most genuinely. But, to be true to facts, the position is that the Depressed Classes are not clamouring for transfer of political power. Their position, to put it plainly, is that we are not anxious for the transfer of power; but if the British Government is unable to resist the forces that have been set up in the country which do clamour for transference of political power—and we know the Depressed Classes in their present circumstances are not in a position to resist that—then our submission is that if you make that transfer, that transfer will be accompanied by such conditions and by such provisions that the power shall not fall into the hands of a clique, into the hands of an oligarchy, or into the hands of a group of people, whether Muhammadans or Hindus; but that that solution shall be such that the power shall be shared by all

communities in their respective proportions. Taking that view, I do not see how I, for one, can take any serious part in the deliberations of the Federal Structure Committee unless I know where I and my community stand.

Rao Bahadur Pannir Selvam : Mr. Prime Minister. It seems to me that in the course of these deliberations the other minorities have not had their full consideration. All along I have felt that while the smaller communities, including the Depressed Classes, were no doubt afforded an opportunity of stating their claims, the deliberations and the discussions have been concentrated on the Punjab question. The Committee has been wholly engrossed with that problem, and because that question baffled all solutions the informal Conference came to the conclusion that the whole thing had been a failure. The question of the other minorities has never been considered at all. We were only given an opportunity of putting forward our claims. Various communities put forward their claims, but so far no attempt has been made to meet any of those demands or to come to an agreement about those demands. As my friend and leader, Sir Annepu Patro put it, we in the South—coming as I do from Madras—have very little interest in the Punjab internal question. I do not see any reason why it should be taken that the Minorities question has been wholly tackled and a solution has not been arrived at, when our case has not been considered at all.

Therefore I am unable to agree to an adjournment *sine die*. I do think there is work before the Minorities Committee to go into the question of the other minorities as well, of course making special endeavours to find a solution for the Punjab question, and to make it fit in with the general scheme if possible. But my own impression is that we have hardly begun the work as far as the other minorities are concerned. Last year I felt there was no need to put forward the claims of the smaller communities so strongly, because it seemed to me there was practically a unanimity of opinion, at least among the various minority communities, and even the other representatives, about the claims and the extent to which they were to be conceded. I appreciate that the positive attitude of the Congress is qualified by your final clause which states that attempts will be made to satisfy all communities; but the positive portion of the Congress Resolution makes the other minorities feel really nervous.

The resolution of the Congress which Mr. Gandhi has been good enough to read out says that Hindus and Muhammadans shall receive consideration and shall be given separate representation in Provinces where they do not form more than 25 per cent., but most of the other minorities in all Provinces are less than 25 per cent. That resolution distinctly states that the Hindus and the Muhammadans are to be given separate representation in Provinces where they are in a minority.

Dr. Moonje : That is not the Congress resolution. Please read it and study it.

Rao Bahadur Pannir Selvam : As I understand the Congress resolution, it says that in Provinces where the Muhammadans and the Hindus form less than 25 per cent. of the population they shall be given separate representation, and the Sikhs shall be given representation in the Punjab and in the North-West Frontier Province. Nothing is mentioned as regards the other minority communities, and Mr. Gandhi himself has definitely stated that he is personally opposed to any special representation as far as the Depressed Classes are concerned, while we, the other smaller groups—the Indian Christians, who are not a negligible number, the Europeans and the Anglo-Indians—find no place at all in the picture. It seems to me, therefore, that at this stage we have ample work before us to consider the case of all the minorities, and I am not able to endorse the resolution which has been moved that this Committee should be adjourned *sine die.*

Sardar Ujjal Singh : I fully share the deep regret and sorrow so eloquently expressed by Mahatma Gandhi and Sir Muhammad Shafi on the breakdown of the negotiations: but there is one feature which ought to be borne in mind, and it is this. Mahatma Gandhi took on himself the task of the settlement of this question within one week, and the failure means that we have not come to any understanding or settlement within that week. The road to further negotiations is not closed; as a matter of fact, Mahatma Gandhi has definitely stated that informal meetings or negotiations might still be carried on.

Yesterday three alternative schemes were suggested for the way out of the difficulty, and Mahatma Gandhi has referred to them in his speech. The first was a scheme suggested by Sir Geoffrey Corbett, and the second was the one that I had the honour to present, with regard to the redistribution of the Punjab. The third was by Sir Hubert Carr, with regard to a bicameral Legislature in the Punjab.

We had not sufficient time to discuss those schemes on their merits. If Sir Geoffrey Corbett's scheme contemplates the separation of Amballa division from the Punjab, then it cannot be acceptable to the Sikhs. It will place them in a hopeless minority—a position from the frying-pan into the fire. The scheme which the Sikhs have suggested, and which I have worked out in detail, was not properly brought to the notice of the members, and it was probably under some misapprehension that my friend Sir Muhammad Shafi said that we wanted all those ten districts necessarily to be transferred to the North-West Frontier Province.

Sir, I beg to present that scheme for the consideration of the members of the Committee, and I suggest that scheme might be circulated. We do not say that those ten districts must necessarily be transferred to the North-West Frontier Province. It may be left to the will of the population, six millions of them, either to constitute themselves into a separate Province or to be transferred to the North-West Frontier Province. I need not discuss the merits

of that scheme here, for it will be before the members in all its details.

Sir, with regard to the question if we do not ultimately come to any final decision amongst ourselves, I do agree that there is no course open to us except that we should leave it to the Government. The Government in the past has decided for the communities, and in future it is certainly the responsibility of the Government to make a fair and just decision of these problems. But, Sir, there is one point which I should like to make clear, and it is this: that if we continue our discussion in this Committee I doubt very much whether we can come to any settlement. We might be able to express our views, or place our own case, but it is certainly very doubtful whether we can come to any final agreement. The only way to find a solution is by the method of informal conferences. So I do not propose that this meeting should be adjourned *sine die,* but it might be adjourned in order to give members further time for private negotiations—with the hope of removing such a feeling of despair as now prevails in this Committee. As a matter of fact, nobody wants to take the responsibility upon himself for an adjournment. The Prime Minister himself might announce that further time might be given, and meanwhile, if certain members of the various groups want to express their views or put forward their case, they are welcome to do it; but necessarily the agreement will have to be arrived at by private and informal negotiations.

Sir, one word with regard to our future work. I am expressing the feeling of my community that we cannot, in fact, agree to any system of government which provides autonomy to the Provinces in the sense that the Central Government should have little or no control over them, unless we Sikhs are assured of our position and our protection. It matters very greatly to us, concentrated, as we are, in one Province of the Punjab. In that Province we still play such an important part that we must be assured of our protection before we submit to any scheme which grants complete autonomy to the Punjab. This view has been expressed unanimously by the Sikh community, and was conveyed to His Excellency the Viceroy in India and to Mahatma Gandhi as well when we met him in Delhi. We may not be here representing our community as such in the sense that we are not elected by them, but we do represent a very big section, if not the entire community. In our views, however, we are voicing the feelings of the entire community without a single exception. And the view of the whole community is that our protection ought to be assured before we can be party to any scheme of Provincial autonomy in the Punjab.

Sir P. Ginwala : I suffer from some disadvantages in having to address this Committee. I was among the last to be appointed. I do not claim any long political experience like my other friends on this Committee do, but I do claim two advantages over most of my colleagues. The first is that I belong to a community which is not asking for any special privileges. We are quite satisfied that we shall be able to work in peace and harmony with our fellow country-

men, and we are not putting forward any claims. The second is rather a personal one: I do not belong to any political association. My duties have prevented me from taking any active part in politics for the last many years, and therefore I claim that I am able to take a more detached view of the situation than most of my colleagues here.

This Committee is concerned with two problems. The first is the question of communal representation, and the second is the safeguarding of minorities. As regards the safeguarding of minorities, we have not really got down to the question, but it is agreed that safeguards should be provided, that they should be adequate and that they should be satisfactory. We have never got really down to what is intended to be accomplished by the provision of safeguards. I take it that at some stage or other this Committee will go into that question.

Meanwhile, there is the question of communal representation. It is no secret on what ground these negotiations fell through. The question of communal representation has two aspects. The first is the representation of the minorities in those Provinces where the Hindus are in a majority. As far as I am able to judge, there is no problem there which will not permit of a satisfactory solution. It appears that the Hindus will retain their majority in those Provinces in which they have a majority but they are willing to give such weightage to the minorities as may be necessary; but the principle is admitted that, in those Provinces where they have a majority, that majority shall be maintained. The difficulty has arisen as regards those Provinces in which the Muhammadans are in a majority.

Now what is the demand of the minorities in those Provinces, particularly the Sikh Community? The demand, as far as I can understand it, is that the majority should either be converted into a minority, or that the majority should be compelled to accept the rights of a minority.

Sardar Ujjal Singh : That is absolutely wrong.

Chairman : I thought that would come, and that is why I was up before Sardar Ujjal Singh himself. I do not think at this moment we should enter into the merits or demerits of the controversy.

Dr. Ambedkar : We are considering Mr. Gandhi's proposition that this Committee should be adjourned *sine die*.

Chairman : Yes, we are considering that proposition, as to what the future action of this Committee should be.

Sir P. Ginwala : Well, Sir, if that is your decision, I have nothing further to say at this stage; but I thought it was common knowledge and I was referring to that as a problem for the further discussion of which this Committee as a whole should give some lead.

Now, Sir, as regards the future, my suggestion is that this Committee cannot run away from the responsibility which it has undertaken, by agreeing to a further postponement and referring this question to some other authority, whether it is a tribunal or a Court of Arbitration or whatever else you like to call it. My view, therefore, is that this Committee should go on with its work; each community should put forward its claim before this Committee, and this Committee must take upon itself the responsibility of judging between the various claims of the communities. If the Muhammadans have a case which they want to put forward, then it must be put before this Committee. My Sikh friends must do likewise. Then this Committee must decide how the claims are to be adjusted. Somebody has got to prepare material. If this Committee is not willing to decide the question, it must prepare materials for somebody else to decide it; but we cannot get away from this, that at some stage or other a decision has to be made. If this Committee does not make that decision, some other authority will have to make that decision. For that purpose let us get down really to the claims, expressed in a definite form, and let us consider how they can be resolved.

The second question is as regards the *safeguards. On those* points also I suggest that the minorities who *are interested in the* safeguard should put forward actual *claims before this Committee* which it can consider for itself. *It is no use asking* for a postponement or agreeing to one, because *I am quite* certain that unless we get down to brass tacks very *little progress* will be made.

Chairman : Well, as regards what has just been said, as those of us who spent a good many hours earlier on in the year know, all that material is before us. There are plenty of brass tacks about; but instead of the brass tacks having their sharp edges into the wood, it is the heads that are lying in the wood and the sharp edges are above. The problem of this Committee is to try to reverse the position of the brass tacks—not to put another half dozen into existence.

Believe me, the regret that has been so sincerely expressed by the representatives who have spoken here to-day is shared in the most whole-hearted way by the representatives of the British Government here. We profoundly regret that no suggestion has been made as the result of those conferences. You know perfectly well that from the very beginning we have pressed and pressed and pressed upon you to come to some agreement amongst yourselves; and that we have done that not because it would help us, but because we have a great sense of your own self-respect; and also that anybody who is going to try and put into definite legal shape the principles of constitutional liberty, which we have in our minds, will find it absolutely impossible to lay down or draft this constitution, or whatever form of words you like to use, unless the communal question has been agreed to, not enforced or made enforceable by a Government to which our friend Mahatma Gandhi would probably at once start some method of passive resistence—not enforce-

able, as I say, in that sort of way, but flowing from your own hearts and the result of your own agreements. That is the thing that we have felt very keenly.

Now, may I appeal to every representative here, to every individual and every representative of sections, not to attribute your common failure to any method by which you have been elected, to your own personal shortcomings? Be honest and face the facts. The communal problem is a problem of fact. Does the problem exist in India or does it not? I do not answer it; I leave you honestly to answer it for yourselves and to yourselves.

Then, if the community problem does exist, how can it be discussed with a view to a settlement, if possible, either in India or here? Now, my Indian friends, you have been brought up on and taught to follow the principles of representative institutions. Supposing the Government of India or the Government here had surveyed India with a blank mind as to what political organisations and political leaders are in India and had said, " We put you all on one side; we do not recognise any of you or any of the organisations which you represent; but we, considering what we imagine to be a sort of mass movement, unorganised very largely, select A and B and C from that mass movement." What would you have said? What would Mr. Gandhi have said? What would Dr. Moonje have said? You would have said that it was one more illustration of how the British Government acts in an arbitrary way.

We did not do that. We believe in democracy, but democracy is not a mere crowd; you must go another step and define your democracy. We believe in representative democracy. There is not a man nor a woman here whose name, whose actions, whose reputation and whose status have been gained independently of organisations. However difficult it may be to get organisations with historical memories of conflicts and so on to come to agreements, I say as a practical politician that you have got to face those difficulties, because you will never solve your problem until you have faced them and until you get your organised masses in agreement with whatever the solution is.

Do not let us go away, therefore, and say it is the composition of this Conference or the way in which you were selected that is to blame for it all. The blame is that the facts are presenting difficulties which you have not yet managed to overcome.

Mr. Gandhi said, quite truly, that the word defeat is not found in his dictionary. Nor is it found in mine; nor, I hope, is it found in yours. You have met with a rebuff. Well, there was a very famous King of my country who met with six very serious defeats, and I would advise you who like to contemplate the mysterious things of nature to go and take his experience into account.

Lying in a cave one day he saw a spider make six attempts to get to the point where it wanted, and it was baffled and failed, and it made a seventh attempt and it succeeded. I do not know how many times you have been baffled in trying to get to an agree-

ment, but do remember that no great achievement has been accomplished at the first, the second or the third attempt, and you had better go on trying to take your own responsibilities upon your own shoulders and see if an agreement can be come to.

There is another point I want to put to you. Will any of you tell me, quite honestly, that the continued existence of this problem unsolved can be overlooked either by yourselves if you were drafting your own constitution or by His Majesty's Government if it were trying to draft a constitution for you? I bring you up against facts. You know perfectly well—especially every one of you who has been in public life and has faced the practical problems of public life—you know perfectly well that whilst this problem is unsolved it puts an enormous obstacle in the way of constitution-making for India, not simply because that constitution must be drafted by His Majesty's Government under present circumstances, but supposing I said to you on behalf of the Government, and supposing Parliament agreed, " Take the business over to yourselves," why, you know perfectly well that you could not go six inches without coming to a deadlock. You could not go six inches without coming up against difficulties, and all those general phrases about your going to settle it in this way or that way—what is the difference between those phrases and what we are doing now? There is no difference at all. His Majesty's Government at the present moment is doing its very best on the lines of those phrases and those aspirations to get you to an agreement; and you have reported to me this morning, and to my colleagues this morning, that you have failed.

Well, what I would suggest is this. Leave me to call the next meeting of this Committee. That is not adjourning *sine die*, I can assure you, but you know that there are certain events going on here—which I am really very sorry to say (and I have felt this all through since you came) are bound not only to take a good deal of my thoughts to themselves but also will necessitate occasional absences from London on my part for the next fortnight or just a little over.

Let us adjourn, and I will call you together again. In the meantime what I would like would be if those of you who are sitting opposite me, the representatives of the small minorities, would also try your hands.

If there are any common agreements among yourselves I would suggest that you circulate them. But I must say this. We cannot here settle the business of the Federal Structure Committee. The Federal Structure Committee must meet itself and decide what it is going to do under certain circumstances, and that will be reported to me, as Chairman of the Conference, in due time, and then we will work at it. But do believe me, we are determined to have a success of this Round Table Conference if you allow us to have that success. It is not the British Government that is going to stand in the way of any agreement. If I disagree a little bit—not very much—with what has been said about what we should do in telling you what we propose to offer, why, my friends, what has

been the promise that we have given you from the very beginning? Has it not been that we would not make up our minds in definite detail until we consulted with you? Do you suggest now that in the middle of this consultation we should break off and then produce a document, and produce proposals? I do not want to do that with you. Who does? You know perfectly well that there is one very serious difficulty in that way. If a Government produces its proposals, well, that is as near a last word as the circumstances of creation will allow anybody to say a last word on anything. Surely you ought to bend all your energies to bringing before us proposals that have been discussed amongst yourselves and discussed with us—proposals which have been examined regarding their real meaning in relation to government; examined regarding the question as to whether they can work or cannot work; because we do not want a constitution which is a machine which will never work at all whatever power you put in behind it, a machine the very mechanism of which means a deadlock. You do not want that. We certainly do not want it.

Therefore what I would like you to have in your minds, after the rather depressing statements to which we have listened, is this: That the British Government wants to go on; the British Government wants you to go on. The British Government will take its action if you cannot go on to an end, because we are determined to make such improvements in the government of India as will make the government of India consistent with our own ideas—as will make the government of India something that is capable of greater and greater expansion towards liberty. That is what we want. I appeal to the Delegates here to-day—Delegates representing all communities—Do not stand in our way; because that is what is happening.

(*The Committee adjourned at 12-40 p.m.*)

PROCEEDINGS OF THE TENTH MEETING OF THE MINORITIES COMMITTEE HELD ON FRIDAY, 13TH NOVEMBER, 1931, AT 10 A.M.

Chairman : My friends, I feel that so far as this Committee is concerned we ought now to make our reports to a Plenary Meeting of the full Conference, so that the work may be wound up and so that the Government may be in a position to make, as it did at the end of the first phase of the Conference, a statement of its own position.

We are practically in a position to do that now. Before doing so, the Committees will have to terminate their work and present a Report to the full Conference, and then the Conference may like to make certain observations on behalf of individuals or on behalf of communities. When that is done, the Government will indicate what view it takes of the situation.

As regards this Committee, I am profoundly sorry that a complete agreement has not been reached, because I want to emphasise

what I have said before—and I think everyone of you agrees with it—that at the foundation of any progress towards the setting up of an Indian constitution lies the problem of community representation, community rights, community protection and so on. How the Legislatures are to be constructed, how the constituencies are to be determined and allotted—I am sure none of you can conceive of a constitution being drafted and constructed without that foundation being laid in it.

The work of this Committee, therefore, was from the very beginning of supreme importance, and I am sorry that you have been unable to present to us an agreed plan.

Last night, however, I received a deputation representing the Muhammadans, the Depressed Classes, at any rate a section of the Indian Christians, the Anglo-Indians and the British community. I think that is the complete range. They came and saw me in my room in the House of Commons last night with a document which embodied an agreement that they had come to amongst themselves. They informed me, in presenting the document to me, that it covered something in the region of 46 per cent. of the population of British India.

I think the best thing would be, as we have had no time to consider this, to treat this document as a document which is official to the records of this Committee, and in order that that may be done I shall ask His Highness The Aga Khan formally to present it here, so that it may be entered in our official record.

H.H. The Aga Khan : Mr. Prime Minister, on behalf of the Muhammadans, the Depressed Classes, the Anglo-Indians, the Europeans and a considerable section of Indian Christian groups, I present the document embodying the agreement which has been arrived at between them with regard to the intercommunal problem with which the Round Table Conference in general and the Minorities Committee in particular are concerned. We desire to make it clear that this agreement has been arrived at after careful and anxious consideration of this difficult and complicated problem and must be taken as a whole. All parts of the agreement are interdependent, and the agreements stands or falls as a whole.

Chairman : Unless there are any observations to be made upon the situation, what I propose to do, as Chairman of this Committee, is just to report to the Plenary Meeting that we have failed to come to a complete agreement, to inform the Plenary Meeting that this document has been handed in, and I will, as Chairman of the Committee, again officially hand it in to the Plenary Meeting itself. That will put the whole thing in order, and it will be passed over for the Government to consider the situation.

I do not think I need say anything more myself at this stage. We have all done our best. I have been more anxious than perhaps some of you can imagine that we should succeed in clearing out this fundamental obstacle, but all I can say at the moment is that the

Government will not allow this obstacle to stand in its way in carrying out its pledges to India. I hope that the statement I shall be authorised to make by the Government at the last meeting of the Plenary Session will be such as to assure all of you that the declaration I made to you at the end of the first Session of the Conference holds good, that the British Government's intention is sincere and firm to do to India what it believes is right, and that the detailed intention is precisely what it was when we asked you to come here and when we said a temporary good-bye to you at the end of the first Session.

I believe, my Indian friends, you will find that that is so when the declaration is made; but, of course, the declaration, before it is made, must become the official declaration of the Government. I am not in a position to make that declaration at the moment, but it certainly will be made within the next few days and before we disperse the whole of the programme, the ideas and the intentions of the Government will be made plain.

Sardar Ujjal Singh : Mr. Prime Minister, I have no desire to make a speech or to make any observations at great length. What I want to point out, Sir, is this, that yesterday I, on behalf of us two Sikh Delegates, circulated a small memorandum stating the Sikh point of view and the Sikh demands. I wish that that memorandum should form a part of the proceedings of this Committee.

I beg to present this memorandum formally.

Then, Sir, with regard to this agreement arrived at by some minorities and the Muhammadans, I only wish to say this much: that the representatives of the Sikh community, which is an important minority in the Punjab, were not at all taken into confidence in the discussions and the negotiations which were carried on between the representatives of the Europeans, the Anglo-Indians, the Depressed Classes and the Muhammadans. Sir, it does not reflect the minority point of view. As a matter of fact it only reflects an agreement between minorities of other Provinces and the Muslim majority in the Punjab. I should say it is a tragedy that the minorities of other Provinces, should have made common cause with the majority community of the Punjab and should have dictated terms to minorities in the Punjab. I take strong exception to this, and I say very emphatically that this document does not meet the needs of the situation and is entirely unacceptable to the Sikh community.

I should go further and say, Sir, that it is wrong to suppose that this form of agreement can afford a real solution of the communal problem. An agreement of a so-called 46 per cent. of the population of the minorities is a sort of camouflage. We did not come here to arrive at an agreement on these important questions by majorities or by majority votes. It ought to be an agreement of the various interests concerned. If the various interests concerned cannot come to an agreement, we can only say here that we have failed to come to an agreement. I say it with great regret,

that, in spite of our best efforts, we have not been able to come to an agreement. But I cannot submit to a sort of document which does not take note of the position of the Sikh community in the Punjab, which only seeks to create majority rule, not the type of majority rule that exists in parliamentary countries or in those countries where democratic institutions exist, but a sort of procedure which will establish a permanent rule of one community unalterable by any appeal to the electorate. Based on separate electorates, it seeks to partition India into various compartments. It seeks to establish the rule of one community in the Punjab, a rule entirely of one community in Bengal, a rule of one community in certain other Provinces. It is not democratic rule at all; it is a negation of the democratic principle, the very negation of the parliamentary system. Now, Sir, if you just look into the merits of this document you will find how most unfair this document has been to the Sikhs and other communities who are not a party to this alliance.

Turning to the figures given in the table at the end of this document you will find that the Muslim minority in the various Provinces is given heavy weightage in their representation in Provincial Councils. In Bihar and Orissa, with 11 per cent. of population they have a representation of 25 per cent., *i.e.*, 130 per cent. weightage; in the United Provinces with 14·8 per cent. population they are given 30 per cent. representation, *i.e.*, 110 per cent. weightage; and in the Central Provinces with 4·4 per cent. population they are given 15 per cent. representation, *i.e.*, 250 per cent. weightage. The Anglo-Indian minorities, with a population of ·02 per cent. in the Punjab are to get as much as 4,000 per cent. weightage. The Europeans are given weightage varying from 3,000 per cent. to 9,000 per cent. in different Provinces. This is a sort of alliance to share a booty taken from other people. They have no right to dictate terms to the minorities in the Punjab, but they have made an alliance whereby they get an advantage of 9,000 per cent.

Sir, I strongly object to this sort of treatment meted out to my community, and I say that this document, far from making it possible for us to come to an agreement amongst ourselves, will make a solution of this most important problem almost impossible. It seeks to encourage those who have been most unreasonable; it seeks to encourage the communities who have in fact stood out against India's advance to stick to their demands, and it will in that way make a solution of this problem almost impossible.

Chairman : May I draw your attention to one point so that the discussion may not proceed on unreal lines? The statement I made to you was this, that the Report which I make to the Plenary Session is not in favour of any of the documents which have been handed in, neither Sardar Ujjal Singh's document nor the other. The Report I make to the Plenary Conference, I regret very much to say, is that we have failed to come to an agreement. In the discussions that may proceed, will speakers please keep that fact in mind?

Sir Provash Chunder Mitter : I have submitted three memoranda with regard to Bengal, and I desire that they may form part of what is submitted.

Dr. Ambedkar : We too, have circulated memoranda which we would like to be part of the proceedings.

Raja Narendra Nath : I also submitted on the 4th November schemes with regard to the Hindu minority, and I should like that document also to go forward. So far as the agreement produced before us is concerned, I fully support the remarks made by Sardar Sahib Ujjal Singh.

Mr. Joshi : On behalf of Labour I also wish to present a statement which has the support of my two colleagues, Mr. Shiva Rao and Mr. Giri, setting forth the point of view of Indian Labour on this question.

I should like to make one comment on the document which has been circulated by what are called the minority communities, and that comment refers to the last page of the document in question, where in paragraph 4 it is said :—

> "No representation is provided for Commerce, Landlords, Industry, Labour, etc., it being assumed that these seats are ultimately communal and that communities desiring special representation for these interests may do so out of the Communal Quota."

Mr. Prime Minister, I cannot agree to the statement that these interests are ultimately communal. So far as the Labour interest is concerned, I have always maintained not only on behalf of Hindu Labour, Christian Labour or Muslim Labour, but on behalf of all Labour, that its interests are not communal in the sense that they have anything to do with religion or with race. I maintain on behalf of all the workers in India that their interests are economic interests and have nothing to do with religion or race.

I therefore feel that the signatories to this document have not done justice to the workers in India, either the Hindu workers or the Muslim workers or the workers belonging to the Depressed Classes. They say: "communities desiring special representation for these interests may do so out of the Communal Quota," but it is not a question of the Muslim community or the Hindu community or the Christian community desiring to protect the interests of the Muslim workers or the Christian workers or the Hindu workers. It is the workers as a whole who demand that their interests shall receive proper consideration and proper protection.

We therefore do not agree with the proposals made in this document, because we feel that even if the communities agree to give representation to the workers on a religious or racial basis, that will necessitate the division of our organisations on the basis of religion or on the basis of race. We are not prepared to have our organisations broken up on the basis of religion or on the basis of race. We would desire, Mr. Prime Minister, that the representation to be

given to Labour should be given to Labour as a whole, so as to enable us to maintain our organisations in a position of strength and solidarity, based on economic interests alone.

We will gladly forego, if it becomes necessary, our special claims, if people force us to divide our ranks on the basis of religion or race. We will keep up our organisations and forego the special representation which may be given to us on the basis of religion or race. If Labour is strong, Labour will get its due by the strength of its organisations, even without special representation in the Legislatures. I therefore wish to make it quite clear on behalf of the workers that we are not willing to have our ranks divided in order to get special representation in the Legislatures.

Dr. Datta : I very greatly regret to have to inflict myself on this Committee. I hope the proceedings will be short this morning, but unfortunately I find myself in a very difficult position. There has appeared in the Press this morning a notice regarding this agreement which has been reached between certain minorities, and the post this morning brought to me the record of the text of this agreement. I have not yet had time, however, to study it.

I myself am supposed to be one of the representatives of the Indian Christian community and I should like to say that I find myself in disagreement with this method of approach to the problem. I am a newcomer to this Committee, having been appointed only last September, and, being a member of this Committee, I have had only two occasions when I might have had an opportunity of stating my views.

In the first place, I believe that a religious community can ask for only two things in the matter of protection. It can say that it wants freedom for worship, and the other thing it can say is, " We desire that we should not be discriminated against because of our religion." Those, and those alone, are the demands we can make in the name of a religious community—nothing more. In the second place, I feel that this fragmentation of India into religious communities is going to have the most disastrous results on our future. I have seen it growing. I have seen the demand growing, and it has been growing ever since 1906, as far as I know, and every time the constitution has been changed this principle has been widened; more and more people have come into it. I came, during 1918, into friendly touch with Lord Southborough, who was going out to India as head of the Franchise Committee, and I happened to travel part of the way with him. I remember on that occasion making the plea that this principle should not be extended to the Christian community in India. I had hoped that he would have resisted it. It was actually accepted for the Madras Presidency, a certain number of seats being reserved for the Christian community, but in no other part of India. On this occasion the demand comes that that should be applied to other parts of India also, and I find myself, unfortunately, in disagreement with my colleague, who, I may say, has treated me extremely generously. We

differ fundamentally on the matter of principle. There is nothing personal between us in this matter at all.

Sir, I wonder whether we can ever get agreement as far as we are concerned on these claims, such as communal representation and the figures of weightage. I do not think we can possibly get it. The demands that have been made to my mind in many parts of India have been preposterous, and I feel that I must dissociate myself from them.

Then, Sir, there is another matter to which I would bring your attention specially. There are some of us in India who have been brought up with a fierce belief in voluntaryism in religion, and you will sympathise with me, Sir, in that. I believe that there is an infringement of my rights when the State says to me, "You shall vote in a particular constituency." What if I say I have got no religion? Does not mean I am going to be disenfranchised? I shall have no vote. It is perfectly open to me in India to return myself in the census as having no religion. I lose my vote. I cannot be elected to the Legislature. Supposing a Christian member of the Legislature, for private and personal reasons, did become a Muhammadan, would he then vacate his seat? He probably would, even as an undischarged bankrupt or a person who had committed a felony would be compelled to vacate his seat, on the same grounds and for the same reasons; and I want to protest against that.

There is one other matter which makes it even more serious. I say that tne Muhammadans are entitled to respect in their demands. In certain parts of India they are the majority, and we do not want them to be turned into a minority, I quite agree. I feel that there is substance in that demand. Now, what have we done? We have gone to this large community—which sometimes, I feel, though a quantitative minority, often acts as a qualitative majority—and we have said to them, "Here, will you protect us in our interests?" The situation is quite different in the Madras Presidency. Let those communities which have fears—the Muhammadans, the Christians, all the small minorities in the Madras Presidency—come together, and let them try the idea of a common electorate among themselves to protect their interests.

In North India the position is reversed. There you have a Muslim majority in the Provinces of Bengal and the Punjab—the two Provinces which I know best. If I may say so, we have discovered that it is not possible for the Muslim community to protect our interests. Shall we then be compelled to throw ourselves back on the Hindus? Ought not negotiations in those Provinces to be taking place between the Hindus and ourselves, and in other Provinces between the Muhammadans and ourselves? It seems to me that the whole relationship is very artificial.

Therefore, Sir, in conclusion I wish to say that I disapprove. I mean to say I am afraid I cannot accept this particular arrangement. I am sorry to find myself in that position. I might have

been willing to negotiate—shall I say—purely on the question of some sort of method by which the smaller communities could have been distributed according to their economic interests. Therefore I support Mr. Joshi. There is no difference between a Christian working-man who drives an engine or puts a rivet into a rail and a Muhammadan doing the same work. I believe Mr. Joshi's method is far sounder than any other method which has been found to date, and I, for one, would be willing to support Mr. Joshi.

Secondly, I want to make it quite clear that, as far as I am concerned and the portions of the community whom I represent, we shall not consider ourselves bound by any agreement that has been arrived at. I want to say that emphatically and clearly. But I would like to add this personal remark, that the relations between me and my colleague are not in the least degree strained; we have both stood for definite principles and we have agreed to disagree on those two things.

Sir Henry Gidney : Mr. Prime Minister, before I make a few remarks on this matter, I should like to tell you that on the 19th January of this year I presented a Declaration of Rights for all minorities, as also the Anglo-Indian community, embodying almost the entire principles underlying the memorandum we have submitted to-day. And, Sir, I would like, with your permission, to represent that document so that it may form a part of the proceedings of the Conference, which it does not at present.

Sir, it is very unnecessary for me to enter into any details as regards that memorandum. We are all in agreement. But I do wish to state here and now that we have taken, I think, every means of getting the Sikhs and other minorities to join us in this memorandum. Indeed, I go so far as to say that I personally have had many consultations with the Sikh member, and the Sikh member was in possession of our memorandum about three or four days ago. I am sorry that our Sikh brother has not been able to agree to the memorandum, and that he has taken such serious objection to the weightage and the protection for which we, as minorities, have thought it fit to ask.

When we started these proceedings with a view to coming to some unanimous agreement, it was Dr. Datta and I who visited His Highness The Aga Khan at his residence. This was the result of a formal meeting some of us had at Mahatma Gandhi's office; and I do believe, if my memory serves me right, that Dr. Datta was in agreement with me that if we could only come to some amicable terms of arrangement with the Muhammadans, the minorities would feel some sense of protection.

Dr. Datta : I do not agree with that.

Sir Henry Gidney : I am sorry that Dr. Datta should now take a different line. Speaking for the small minority I represent, I am pleased to say we have come to an agreement. I am pleased for two reasons. One is that this memorandum in the main embodies the Declaration of Rights that I submitted last year to this Confer-

ence, and secondly, because we, the minor minorities, have received from the Muslim community unmistakable evidence of a high sense of loyalty and attachment to us in our needs, and I take this opportunity to offer to them on behalf of the other minorities our grateful thanks for their loyalty and adhesion to us during these very difficult proceedings.

Raja Narendra Nath : They were secret meetings.

Sir Henry Gidney : There has been no secrecy about these meetings. All the minorities were able to come to the meetings. Many of them knew they were being held, and the mere fact of their keeping out shows that the problem as far as they were concerned was insoluble, while as far as we were concerned, it was soluble. We have made a serious effort to get together, Sir, and we have presented you with a document which I believe represents the views of a very large section of the Indian population.

Last year, when this combined action of the minorities was suggested by me, it was not accepted. This year, we have to thank the statements made at this Conference for refusing to recognise the minorities in any settlement, and that has bound us together, and we now feel we have a common tie uniting us. We have presented this to you with the earnest desire that you, Mr. Prime Minister, and the Cabinet, will give it serious consideration.

Sir Hubert Carr : I should like to explain the remark made by Sardar Ujjal Singh. I think he has got an entirely wrong view of the memorandum we handed to you. There was no question, so far as I know, from the beginning of the negotiations which led to this common agreement, of dictating to any community or laying down for any community what that community should want. What we have done was brought about very largely by the failure of the informal Committee which sat under the chairmanship of Mr. Gandhi, and really I have to thank Mr. Gandhi for his share in bringing the minorities together. It was the refusal to allow us to send our representatives through separate electorates to the Legislatures of India and the Provinces which made it essential for us to get together.

You have yourself said, Sir, that in order to make this constitution workable and acceptable all parties must have confidence in it, and several of the smaller minorities, as well as my own, know perfectly well that, unless we have separate electorates, we cannot send our chosen representatives to the Parliaments of India, and consequently we shall not have that full confidence which we want to secure. Nobody sitting at this table can have followed the argument regarding separate electorates and joint electorates without feeling the force of the statement that in order to get full development of India you will finally come to joint electorates, and I would ask members to see that in our memorandum we have not attempted to cut India up into water-tight compartments on a permanent basis, but we have taken it recognising the realities of the position to-day, deplorable as they may be, that there is tremendous distrust dividing the different communities small and

great. We are recognising in this memorandum those differences. We are accepting them temporarily, and we are trying to overcome those difficulties by getting together and putting forward a scheme whereby for 10 years we shall have a chance of sending up our chosen representatives.

They will get round the table, and I ask those who are the chief critics of this scheme whether they really think that when all of us get round the table, with big national questions before us, in ten years those questions will not do much to cut across the communal differences. I claim that, far from making water-tight compartments in India, we have made a definite constructive suggestion for getting away from the present difficulties and moving towards the unity of India later.

Now, in doing so there has been no question of loot. I do not suppose for one moment that in trying to arrange the percentages amongst people who sometimes wanted a 140 per cent. out of 100 we have been able to satisfy everybody, but I do claim that the figures put forward are reasonable.

Now, my friend, Sardar Ujjal Singh, accused me and my community of taking 9,000 per cent. weightage. I have not worked it out, but if his figures are correct he should mention that in the past we had 12,500 per cent. weightage, so that we have given up 3,500.

On the other hand, so far as the Sikhs in the Punjab are concerned, we have increased their weightage by 54 per cent. from what they enjoy at present, in an effort to try to meet them. I am not suggesting they will agree with what we have done. In my discussions with them they have suggested that it is quite impossible for them to agree on any basis where the Muhammadan is in the majority, even though he is in the majority of the population. I do claim, however, that the suggestion we have made is not entirely unreasonable.

There is only one other point with regard to which I should like to give an answer to my friend, Sardar Ujjal Singh. If I heard him rightly, he suggested that in Bengal and the Punjab the whole country was being put permanently into the hands of the Muslim majority. I can only ask whether it is possible that any country is going to be ruled for very long by a majority of one. The Muhammadans get only 51 per cent. under our suggestions in each Province.

I do not think I have anything else to add. The memorandum, as I see it, is not entirely exhaustive; for instance, we have not touched on the question of Second Chambers, which, many have suggested, may form a suitable arrangement in various Provinces; but these Second Chambers would be in conformity with the lines which we have suggested as a fair distribution of representation among the various communities.

I ask this Committee to accept it that I am not speaking only for myself here; I know I may speak for the other minorities,

with whom I have had the pleasure of working, when I say this is considered to be, and meant to be by us, a constructive suggestion for overcoming the present deplorable deadlock which, when we last met, was considered so insuperable that it was suggested the Committee should be adjourned *sine die*.

Dr. Moonje : Sir, the document that was presented by His Highness The Aga Khan to this Committee this morning reached my hands only a minute or two before I was due to leave for the meeting of this Committee. I am not, therefore, at present in a position to make any kind of statement or any kind of comment on the details of the scheme, but, from the remarks that I have heard here, it seems the chief characteristic of that document appears to be separate electorates and weightage, to which what qualification I could apply at this time I am at a loss to know, because it has been calculated that a weightage of 3,000 times has been given in some cases and 9,000 times in others. I am not in a position, therefore, to say what the percentage weightage is, but I can quite understand that the two points on which that document is based are separate electorates and an excessive amount of weightage. I think it may be well to make the position of the Hindu Mahasabha quite clear. The Hindu Mahasabha will never agree to separate electorates and they will never agree to any weightage being given from the Hindu community.

The third point that has been made clear from the remarks is that the document says a communal government by a communal majority by law should be established in two Provinces, the Punjab and Bengal. To that the Hindu Mahasabha will not agree. Unfortunately it seems that it has entirely passed out of their minds that the Hindus in Bengal and the Punjab also form a minority community, and therefore deserve some kind of protection. These are matters of detail which I have not been able to study from the document, and therefore I cannot say more at this stage.

A statement of the position of the Hindu Mahasabha was presented last time in this Conference. Unfortunately it was not published in the reports, probably through an oversight, but a promise has been given to me that it will be published in whatever reports may be issued later. I therefore represent the same statement of the Hindu Mahasabha for publication in the Report, and I take advantage of the opportunity you have given us of handing in a supplementary statement to this statement.

To these few words I have nothing more to add.

Mrs. Naidu: Mr. Prime Minister, I do not wish to detain this Committee very long, but only to say one or two words. You are aware that among other things I am the official representative of the women's organisations in this assembly, and I wish to strike a pleasant note in the midst of many discordant ones. Where so many communities representing minorities have asked for special or separate protection, I have a proud mandate from a large section of the women of India, who not only disclaim any special protection,

concession or favour, but have ordered me to resist any demand for any concession, have ordered me in their name to refuse to accept any indirect or direct means of preferential treatment, no matter how influential or illustrious the support it might receive from the mere men in this Committee. It is alleged—I do not know how accurately—that my great leader, Mahatma Gandhi, is among those mistaken people who are willing to give a chivalrous assurance to the weak-kneed women of India that they will give support to them in any claim they may make for indirect concessions. I have great pleasure in resisting his claim to represent the women of India in any way. In this matter he must take my guidance and not I his. I therefore wish it to be noted, on behalf of the three great organisations which I represent, and which make claim to represent the collective view of the women of India who are engaged in public work of any kind, that they will not accept any concession in the way of co-option, nomination or reservation of seats.

My colleague Mrs. Subbarayan, has, I know, issued a very able minority memorandum which I am sure you will duly consider. We have already circulated the memorandum on behalf of the organised public opinion of the women of India, which I am sure the Government will also consider. And, without taking up your time any further, may I ask that you will record my claim on behalf of the women of India, that they do not wish to complicate the issues in any fashion, but to set an example by disclaiming any effort to give them preferential treatment because of their sex? We do not wish for sex discrimination either against or on behalf of the women of India.

The Nawab of Chhitari: Sir, a confession of failure is humiliating indeed, and it is true, as you mentioned, Sir, that we have not been able to come to a complete solution of the communal problem. Standing here to-day, I do not wish to say anything on behalf of the Muhammadans. My respected leader, His Highness The Aga Khan, has put forward the agreement arrived at between Muhammadans and some other communities. Having made that quite clear, I want to submit that the communal differences, when one looks at them carefully, are not quite so formidable in reality as they appear to be outwardly. His Highness The Aga Khan in presenting this Conference with an agreement has shown that it is backed up by 45 per cent. of the community. If we read the resolution of the Working Committee of Congress on the communal question together with the resolution of the All Parties Muslim Conference—I do not wish to refer to any private negotiations—we find that a careful scrutiny will show that in fact the differences are not quite so wide as would at first sight appear. The points of difference have been narrowed down very much.

My special purpose in speaking to-day is to put forward the case of another small class, if not a community. I mean the landlords. I wish to submit that during the last year conditions have arisen in India which have caused the owners of the land a good deal of alarm. There was agitation which was of course due to

economic troubles; but at the same time certain phases of the unrest were such that they caused them a lot of anxiety, and the British Indian Association has passed a resolution asking landlords at the Round Table Conference to beg the Minorities Committee to insist that in the Fundamental Rights a guarantee for the right of private property should also be included. In the Nehru Report this guarantee was given and I see nothing against it. I do not demand it only for the landlords. In fact, it is essential for everybody who possesses anything in the country that his position as to his property should be guaranteed. That is the only point that I wanted to make on behalf of the landlords here. I may put their case about other safeguards on some other occasion, as I do not think the Minorities Committee has anything to do with the constitution of the future Government, as to whether it should be bicameral or unicameral.

Begum Shah Nawaz: Prime Minister, last year in your concluding speech you said that we had spoken here subject to reconsideration and subject to the reaction our public opinion would show to our work. When I went back to my country I was surprised to find that the proposals that Mrs. Subbarayan and I had put before you on behalf of our country-women were not acceptable to them. Women belonging to almost all castes, creeds and sections said that they were not prepared to accept any special qualification or allocation of seats. Wherever I went, in Bombay, in Delhi, in Lahore, in Simla, in Mussoorie, Aligarh and Ambala, almost all the women —at least 90 per cent. of the educated classes—said to me that in asking for these special qualifications in our proposals we had not asked for what they wanted us to secure for them. As you are aware, last year we did not come with any mandates, and in consultation with some of our sisters here we put forward those proposals. But representative meetings have now been held almost all over the country, and especially in Bombay and Lahore, and we have been asked to place before you this memorandum which has been circulated to the members of this Committee on behalf of the women in India. I have to submit for your consideration, Sir, that most of the women of my country belonging to all classes will not accept any special treatment or qualification which means a position of sex inferiority. This is the mandate we have brought and this is what I place before you. I am an original member of the All-India Women's Conference; I have also been serving on our Provincial Organising Committee for the last five or six years, and I was presiding at the Western Punjab Conference only last April. Therefore, it is my duty, rather my pleasant duty, to say to you that we, the women of India, ask that there shall be no disqualification of sex with regard to our civic rights.

Sir Chimanlal Setalvad: I beg leave to occupy a few moments of the Committee's time on behalf of those who sit with me at this corner of the table. We are not in any sense communal. We do not belong to any communal organisation. We belong to a political group which is more interested in the political advance of the

country, and being such a group, we venture to submit that the course you have indicated for the future sittings of the Plenary Session is not calculated to serve the end for which we have all assembled here. It involves this, that the Federal Structure Committee will practically come to an end. We shall not further proceed to the consideration of the vital questions of Finance, Defence, and other constitutional matters. The Plenary Session will be held, and after a general talk we shall disperse. It is much to be regretted that this is going to be the end of this Conference, which has been looked to in the whole of India with very anxious eyes. All the expenditure involved in all the Delegates coming overseas last year and this year will practically end in nothing. We venture to submit, therefore, that instead of taking the course you are indicating, namely, to report to the Plenary Session a failure, to stop the further work of the Federal Structure Committee, to stop in fact all discussions with regard to Financial Safeguards, Defence, the Army, and other vital constitutional questions—instead of this, that you, Sir, the Prime Minister, should decide the difficulties of the communal question and report your decision to the Plenary Session, which need not be called as early as you have indicated, but a little later, so as to allow the Federal Structure Committee to deal further with the essential and vital questions with regard to which the whole of India is concerned.

Nor should you, Mr. Prime Minister, feel any hesitation in taking on yourself the burden and the responsibility of deciding the communal problem, because when we began last year, as you are all aware, failure in this direction was not unanticipated. We put forward our best efforts, both last year and this year; and, when you come to the merits of the difficulties that have arisen from the communal question, I think there is considerable misapprehension existing in the minds of many people. It is made to appear as if all these communities are disagreed on almost every point, that they are hopelessly at logger-heads. That is, I submit, far from the truth. If we properly analyse the situation, I venture to say that we shall find that the points of disagreement are much fewer than the points of agreement.

Take, for instance, Mr. Prime Minister, the real and vital protection that the minorities require—protection for their religion, protection for their culture, a proper place for their members in the Services, and so on. With regard to these matters, various formulas were thrashed out last year and practically agreed to, and I find in the statement which His Highness The Aga Khan has submitted some of those formulas have been adopted verbatim.

If, therefore, we have regard to the essential and vital protection that the different communities need, we shall find that there is considerable agreement amongst the members of the Conference. The difference, as I have ventured to point out in the note which I have circulated to the members of this Conference, can really be narrowed down to the difficulty which exists and which has to be faced with regard to the Punjab and with regard to Bengal.

It should not prove impossible to find a solution for that difficulty. It should not be difficult, to my mind, for you, Mr. Prime Minister, with all the experience and knowledge of political affairs that you have gained in your varied life, and knowing intimately, as you do now, the minds of the people assembled here, to come to a decision which may be fair and impartial to all concerned on the question of the Punjab, and on the question of Bengal; and, if you solve that, everything will practically be solved.

I do, therefore, appeal to you, Mr. Prime Minister, and I hope and believe that all the parties concerned will acquiesce in the idea that whatever points of difference are left or still exist between the various communities may be left to your judgment and decision. I do not think that any party should have any hesitation in entrusting that decision to you, having confidence in your political sagacity and impartiality.

As I say, in view of events since last year, and of all the study of the details and intricacies of this problem, it should not take very long for you, Sir, to come to a rough and ready decision. I implore you, therefore, to adopt that course if my brother Delegates here will support my suggestion, that instead of throwing away all the work that has been done all this time, and bringing the Federal Structure Committee's work to an abrupt ending, as will be the case, and leaving unsolved and unconsidered the vital problems of constitutional advance in the country, the communal difficulty may be solved in the manner I have suggested, Mr. Prime Minister, by yourself taking upon you the burden and the responsibility of giving a decision which everyone must accept. Having done that, proceed with the work of the Federal Structure Committee as originally intended, go through all the vital constitutional questions that are awaiting solution, and then call the Plenary Session to approve of that Report of the Federal Structure Committee.

What I mean, Sir, is that this session of the Conference should not end without achieving what you started last year to achieve. Let us, before we disperse, have the main features of the constitution hammered out, let us have the framework of the constitution settled in a manner satisfactory both to India and to England.

As I have said, as regards communal difficulties, if we really and properly analyse them, they can be reduced to a very narrow compass indeed, and in a spirit of generous give and take it should not be impossible to arrive at a solution even now. We have tried, and we have failed, in a manner which nobody can help regretting, but, as I say, at this stage, in order to save the work of the Conference, in order to secure to India at an early stage the constitution that everybody wants and hopes for, the only course which is feasible is that this question of the minorities and the communal question should now be decided authoritatively by you, Sir, the Prime Minister, and that then the work of the Federal Structure Committee should proceed.

Mrs. Subbarayan: Mr. Prime Minister, I do not want to take up much of the time of the Committee. Acting on the

suggestion that you made at our last meeting, I circulated a memorandum to this Committee on the subject of women's representation in the Legislatures. Briefly, it states the proposals that the women's delegation put forward last year; only I have made slight modifications to meet the divergencies of view among the women in India.

I regret very much that there is a difference of view among the women of India, and even among the women's delegation, but I think it is not strange to meet with differences of view among thinking women, just as there is difference of opinion among thinking men.

Mrs. Naidu and the Begum Shah Nawaz have explained to the Committee the claims, or rather the denial of any claims, put forward by the three important women's organisations in India, but I cannot admit the claim that their memorandum is supported by the whole womanhood of India, by women of all classes and communities. I know that there is a large body of educated women, women who have had practical experience of social, educational and political work in India, who do not support the memorandum issued in the name of these three women's organisations in India, but who feel that it is necessary to have some method to ensure the presence of women in our first few Legislatures under the new constitution, and these women have asked me to press this claim at this Conference just as I did last year.

Besides, it has been pointed out to me that this memorandum has not been fully considered by all the branches of these organisations. One of the organisations expressed a view different from the view expressed in this memorandum about two months before the memorandum was issued. And my friends who think like me feel that if the different aspects of the question are presented to these organisations they might modify their views.

Prime Minister, those who feel like me and have urged me to press this claim, agree with the women's organisations and my two colleagues here as regards principles. We do want equality; but at the same time we fear that the equality which may be given to us in the constitution may be, for some time at least, equality only on paper and not equality in actual practice. We feel that there is some confusion as to equality of opportunity and equality of rights. Equal political rights will not necessarily give women equal chances in open elections. We therefore feel that it is absolutely necessary that some method should be devised to ensure the representation of women on the Legislatures.

My friends, like me, Prime Minister, are realists; when we think of an ideal and are very anxious to achieve that ideal, we also think of practical steps to achieve that ideal, and do not allow ourselves to be swayed by mere sentiment and theories. Lastly, in putting forward this claim on behalf of those women and myself, we think not only of the interests of women but also of national interests in general, as we firmly believe that it is essential for our

Legislatures to have the co-operation of women in the interests of national progress.

With these few words, Prime Minister, I would formally request you to accept the memorandum that I had the privilege of circulating to the Committee and the Conference as an official document for the favourable consideration of the Committee and the Conference.

Mr. Gandhi: Prime Minister, and fellow Delegates, it is not without very considerable hesitation and shame that I take part in the discussion on the minorities question. I have not been able to read with the care and attention that it deserves the memorandum sent to the Delegates on behalf of certain minorities and received this morning.

Before I offer a few remarks on that memorandum, with your permission and with all the deference and respect that are your due, I would express my dissent from the view that you put before this Committee, that the inability to solve the communal question was hampering the progress of constitution-building, and that it was an indispensable condition prior to the building of any such constitution. I expressed at an early stage of the sittings of this Committee that I did not share that view. The experience that I have since gained has confirmed me in that view; and, if you will pardon me for saying so, it was because of the emphasis that was laid last year and repeated this year upon this difficulty, that the different communities were encouraged to press with all the vehemence at their command their own respective views.

It would have been against human nature if they had done otherwise. All of them thought that this was the time to press forward their claims for all they were worth, and I venture to suggest again that this very emphasis has defeated the purpose which I have no doubt it had in view. Having received that encouragement, we have failed to arrive at an agreement. I therefore associate myself entirely with the view expressed by Sir Chimanlal Setalvad, that it is not this question which is the fulcrum, it is not this question which is the central fact, but the central fact is the constitution-building.

I am quite certain that you did not convene this Round Table Conference and bring us all six thousand miles away from our homes and occupations to settle the communal question, but you convened us, you made deliberate declarations that we were invited to come here, to share the process of constitution-building, and that before we went away from your hospital shores we should have the certain conviction that we had built up an honourable and a respectable framework for the freedom of India, and that it awaited only the imprimatur of the approval of the House of Commons and the House of Lords.

Now, at the present moment, we are face to face with a wholly different situation, namely, that because there is no communal settlement agreed to by us there is to be no building of the constitu-

tion, and that as a last resort and as the last touch you will announce the policy of His Majesty's Government in connection with the constitution and all the matters that may arise from it. I cannot help feeling that it would be a sorry ending to a Conference which was brought into being with so much trumpeting and with so much hope excited in the minds and in the breasts of many people.

Coming to this document, I accept the thanks that have been given to me by Sir Hubert Carr. Had it not been for the remarks that I made when I shouldered that burden, and had not it been for my utter failure to bring about a solution, Sir Hubert Carr rightly says he would not have found the very admirable solution that he has been able, in common with the other minorities, to present to this Committee for consideration and finally for the consideration and approval of His Majesty's Government.

I will not deprive Sir Hubert Carr and his associates of the feeling of satisfaction that evidently actuates them, but in my opinion what they have done is to sit by the carcase, and they have performed the laudable feat of dissecting that carcase.

As representing the predominant political organisation in India, I have no hesitation in saying to His Majesty's Government, to those friends who seek to represent or who think they represent the minorities mentioned against their names, and indeed to the whole world, that this scheme is not one designed to achieve responsible government, but is undoubtedly a scheme designed to share power with the bureaucracy.

If that is the intention—and it is the intention running through the whole of that document—I wish them well, and the Congress is entirely out of it. The Congress will wander no matter how many years in the wilderness rather than lend itself to a proposal under which the hardy tree of freedom and responsible government can never grow.

I am astonished that Sir Hubert Carr should tell us that they have evolved a scheme which, being designed only for a temporary period, would not damage the cause of nationalism, but at the end of ten years we would all find ourselves hugging one another and throwing ourselves into one another's laps. My political experience teaches me a wholly different lesson. If this responsible government, whenever it comes, is to be inaugurated under happy auspices, it should not undergo the process of vivi-section to which this scheme subjects it; it is a strain which no Government can possibly bear.

There is the coping stone to this structure, and I am surprised, Mr. Prime Minister, that you allowed yourself to mention this as if it was an indisputable fact, namely, that the proposals may be taken as being acceptable to well over one hundred and fifteen millions of people, or about 46 per cent. of the population of India. You had a striking demonstration of the inaccuracy of this figure. You have had, on behalf of the women, a complete repudiation of special representation, and as they happen to be one-half of the

population of India, this 46 per cent. is somewhat reduced; but not only that: the Congress may be a very insignificant organisation, but I have not hesitated to make the claim, and I am not ashamed to repeat the claim, that the Congress claims to represent 85 per cent. or 95 per cent. of the population not merely of British India but of the whole of India.

Subject to all the questions that may be raised, I repeat the claim with all the emphasis at my command that the Congress, by right of service, claims to represent that population which is called the agricultural population of India, and I would accept the challenge, if the Government were to issue the challenge, that we should have a referendum in India, and you would immediately find whether the Congress represents them or whether it does not represent them. But I go a step further. At the present moment if you were to examine the register of Congress, if you were to examine the records of the prisons of India, you would find that the Congress represented and represents on its register a very large number of Muhammadans. Several thousand Muhammadans went to goal last year under the banner of Congress. The Congress to-day has several thousand Muhammadans on its register. The Congress has thousands of Untouchables on its register. The Congress has Indian Christians also on its register. I do not know that there is a single community which is not represented on the Congress register. With all deference to the Nawab Sahib of Chhitari, even landlords and even mill-owners and millionaires are represented there, I admit that they are coming to the Congress slowly, cautiously, but the Congress is trying to serve them also. The Congress undoubtedly represents Labour. Therefore this claim that the proposals set forth in this memorandum are acceptable to well over one hundred and fifteen millions of people needs to be taken with a very great deal of reservation and caution.

One word more and I shall have done. You have had presented to you and circulated to the members, I hope, the Congress proposal in connection with the communal problem. I venture to submit that of all the schemes that I have seen it is the most workable scheme, but I may be in error there. I admit that it has not commended itself to the representatives of the communities at this table, but it has commended itself to the representatives of these very classes in India. It is not the creation of one brain, but it is the creation of a Committee on which various important parties were represented.

Therefore you have got on behalf of the Congress that scheme; but the Congress has also suggested that there should be an impartial arbitration. Through arbitration all over the world people have adjusted their differences, and the Congress is always open to accept any decision of an arbitration court. I have myself ventured to suggest that there might be appointed by the Government a judicial tribunal which would examine this case and give its decision. But if none of these things are acceptable to any of us, and if this is the *sine qua non* of any constitution-building, then I say

it will be much better for us that we should remain without so-called responsible Government than that we should accept this claim.

I would like to repeat what I have said before, that, while the Congress will always accept any solution that may be acceptable to the Hindus, the Muhammadans and the Sikhs, Congress will be no party to special reservation or special electorates for any other minorities. The Congress will always endorse clauses or reservations as to fundamental rights and civil liberty. It will be open to everybody to be placed on the voters' roll and to appeal to the common body of the electorates.

In my humble opinion the proposition enunciated by Sir Hubert Carr is the very negation of responsible Government, the very negation of nationalism. If he says that if you want a live European on the Legislature then he must be elected by the Europeans themselves, well, Heaven help India if India has to have representatives elected by these several, special, cut-up groups. That European will serve India as a whole, and that European only, who commands the approval of the common electorate and not the mere Europeans. This very idea suggests that the responsible Government will always have to contend against these interests which will always be in conflict against the national spirit—against this body of 85 per cent. of the agricultural population. To me it is an unthinkable thing. If we are going to bring into being responsible Government and if we are going to get real freedom, then I venture to suggest that it should be the proud privilege and the duty of every one of these so-called special classes to seek entry into the Legislatures through this open door, through the election and approval of the common body of electorates. You know that Congress is wedded to adult suffrage, and under adult suffrage it will be open to all to be placed on the voters' list. More than that nobody can ask.

One word more as to the so-called Untouchables.

I can understand the claims advanced by other minorities, but the claims advanced on behalf of the Untouchables, that to me is the "unkindest cut of all." It means the perpetual bar-sinister. I would not sell the vital interests of the Untouchables even for the sake of winning the freedom of India. I claim myself in my own person to represent the vast mass of the Untouchables. Here I speak not merely on behalf of the Congress, but I speak on my own behalf, and I claim that I would get, if there was a referendum of the Untouchables, their vote, and that I would top the poll. And I would work from one end of India to the other to tell the Untouchables that separate electorates and separate reservation is not the way to remove this bar-sinister, which is the shame, not of them, but of orthodox Hinduism.

Let this Committee and let the whole world know that to-day there is a body of Hindu reformers who are pledged to remove this blot of untouchability. We do not want on our register and on our census Untouchables classified as a separate class. Sikhs may

remain as such in perpetuity, so may Muhammadans, so may Europeans. Will Untouchables remain Untouchables in perpetuity? I would far rather that Hinduism died than that untouchability lived. Therefore, with all my regard for Dr. Ambedkar, and for his desire to see the Untouchables uplifted, with all my regard for his ability, I must say in all humility that here the great wrong under which he has laboured and perhaps the bitter experiences that he has undergone have for the moment warped his judgment. It hurts me to have to say this, but I would be untrue to the cause of the Untouchables, which is as dear to me as life itself, if I did not say it. I will not bargain away their rights for the kingdom of the whole world. I am speaking with a due sense of responsibility, and I say that it is not a proper claim which is registered by Dr. Ambedkar when he seeks to speak for the whole of the Untouchables of India. It will create a division in Hinduism which I cannot possibly look forward to with any satisfaction whatsoever. I do not mind Untouchables, if they so desire, being converted to Islam or Christianity. I should tolerate that, but I cannot possibly tolerate what is in store for Hinduism if there are two divisions set forth in the villages. Those who speak of the political rights of Untouchables do not know their India, do not know how Indian society is to-day constructed, and therefore I want to say with all the emphasis that I can command that if I was the only person to resist this thing I would resist it with my life.

Chairman: It is necessary that before we disperse there should be no misunderstandings again. The documents which have been put in are not documents that have received the approval of this Committee, of the Round Table Conference, or of His Majesty's Government. The documents placed before us officially represent the views of the communities and of those who have definite views on the subject of minority representation. To take one illustration of what has happened, I do not think it is fair for anyone here to say that because I reported to this Conference that I was informed last night by a deputation that they presented a document covering 46 per cent. of the population of India, that therefore I associated myself with that statement or in any way took up any relationship to it except to tell you that that was said to me last night.

The document remains an official document, which will be examined in the light of what has been said here now, and it will be used, like other documents, for the guidance and enlightenment of those who settle down to deal with the details of the problem. Please, therefore, do not allow any somewhat slight departure from accuracy to prejudice your minds or to be the origin of any political agitation whatever.

I find myself—and I know my colleagues do too—very much in agreement with Sir Chimanlal Setalvad, but we have again and again and again pressed that the Federal Structure Committee should discuss those subjects included in the class of safeguards—the Army, Finance and so on. From inside the Federal Structure

Committee itself, however, from that very Committee itself, we were informed that those subjects could not be dealt with in that Committee, and the movement to let it suspend its work for the moment came not from us but from the Committee itself.

Pandit M. M. Malaviya: Not from the Committee.

Several Members: From a section of the Committee.

Chairman: It is perfectly true it might be regarded as a section of the Committee, but then the other section declined to attend and discuss these subjects, according to my report. It is no doing of ours and it is no motion of ours that this should be the case; as a matter of fact, we are so determined to have your views on that that other means will have to be taken to get them. We are not going to deal with the subject of safeguards without knowing your views. We wish the whole Committee to express its views, including all the sections represented on the Committee, and we are not going to take any action without a very close examination of your point of view. The trouble has been to get it.

There is one thing I should like to assure my friend upon, and it is this. The work that has been done here is not to be wasted. The expression of views which has taken place here is not to be put on one side. The declaration made by the Government at the end of the last Session of the Round Table Conference holds good; the work will be proceeded with. I think I had better wait until I am really authorised to make a detailed statement and not anticipate it, because on further consideration there might be better suggestions made. We have put our hand to this plough, and our hand is going to remain on the plough until the end of the furrow. Make no mistake about that. That remains. We wanted the very closest co-operation. We have taken every step we could to get it, and we are as much disappointed as anybody else that the Federal Structure Committee, in the circumstances, could not, apparently, finish its work.

Now, my friend (Sir Chimanlal Setalvad), there is your point. We cannot here deal with the Federal Structure Committee. Nothing that is happening now has happened by design, nor is it happening because we like it; but you see the position yourselves.

Mr. Gandhi has made a very impressive declaration—a very impressive declaration. Other impressive declarations have been made. Will you, each of you, every member of this Committee, sign a request to me to settle the community question and pledge yourselves to accept my decision? That, I think, is a very fair offer.

Mr. Sastri: We are willing on this side.

Chairman: But I do not want any section, or any one man. Will the members of this Committee sign a declaration asking me to give a decision, even a temporary one, on the community question, and say that you will agree? I do not want it now. I say, will you put your names to it and give that to me, with the

assurance that the decision come to will be accepted by you and will be worked by you to the best of your ability in the course of the working of the new constitution? I have asked several sections—at least, individuals—from time to time for that, and I have never got it. That would certainly straighten out the position, but apart from that, do, please, not forget what I said in opening this meeting—that the Government will not allow community differences to prevent it from carrying out its pledges and producing a constitution. Therefore do not make the community difference more important than it is; but I say to you now, and you all know, I am sure, in your own hearts that I am right, that the solution of the Indian community difficulty ought to be reached by those of you who are here, and if you cannot do it I say very well, your failure to do it will not mean that the British Government will simply sit back and say "We can do nothing at all." That is not the case.

This work is going to go on. Do not make any mistake about that. This work is going to go on and it is going to come to a successful issue too.

(The Committee adjourned *sine die*.)

NOTE ADDED BY SIRDAR UJJAL SINGH.

I wish to make a correction in Sir Hubert Carr's statement to the effect that the scheme of representation in the Punjab contained in the agreement had increased the weightage of the Sikhs in the Punjab. In fact the weightage has been reduced by 11 per cent. The Sikhs are now enjoying 18 per cent. representation with 11 per cent. of the population, which means a weightage of 65 per cent. But in the new census the Sikh population has gone up to 13 per cent. and with this population a representation of 20 per cent., as is provided in the agreement, means a weightage of 54 per cent., *i.e.*, 11 per cent. less than they are already enjoying. Even with their previous weightage alone the Sikhs are now entitled to 22 per cent. representation in the Punjab. But the Sikhs want a similar weightage to that enjoyed by Muslim minorities.

SECOND REPORT OF MINORITIES COMMITTEE.

The Report of sub-Committee No. III (Minorities) approved by the Committee of the whole Conference on 19th January, 1931, recorded that opinion was unanimous "that in order to secure the co-operation of all communities which is essential to the successful working of responsible government in India, it was necessary that the new constitution should contain provisions designed to assure the communities that their interests would not be prejudiced, and that it was particularly desirable that some agreement should be come to between the major communities in order to facilitate the consideration of the whole question." In these circumstances, it recommended that "the Conference should register an opinion that it was desirable that an agreement upon the claims made to it should be reached and that the negotiations should be continued between the representatives concerned, with the request that the result of their efforts should be reported to those engaged in the next stage of these negotiations."

2. The Committee resumed its deliberations on 28th September, and met subsequently on 1st October, 8th October and 13th November. It had the assistance in its discussions of the representative of the Congress Party.

3. At the first meeting of the resumed Committee on 28th September it was reported that informal negotiations were proceeding between certain of the communities concerned, and after discussion it was unanimously agreed that, in order to give these negotiations an opportunity to reach a conclusion, the Committee should adjourn until 1st October. On its meeting on that day a further motion of adjournment until Thursday, 8th October, to enable the continuance of the negotiations, was moved by Mr. Gandhi and unanimously accepted. It was agreed that the problem of the Depressed Classes and other smaller minorities would form part of the communal problem which was to be the subject matter of the conversations.

4. At the third meeting of the Committee on Thursday, 8th October, Mr. Gandhi reported that the negotiations which had taken place had unfortunately proved entirely abortive, despite the utmost anxiety on the part of all concerned to reach a satisfactory outcome. After considerable discussion it was agreed that the Committee should be adjourned for a further period to enable fresh efforts to be made to reach agreement between the various interests affected. It was decided in this connection that two schemes designed to overcome the communal difficulties in connection with the position in the Punjab which had been prepared by Sardar Ujjal Singh and Sir Geoffrey Corbett should be circulated for the consideration of the Delegates. These schemes are printed as Appendices XVII and XVI to our Report. A scheme for the solution of the communal problem prepared by the Indian National Congress, to which reference was made by Mr. Gandhi at the meet-

ing of the Committee on 8th October, and which was subsequently circulated at his request, is printed as Appendix I.

5. No further meeting took place until 13th November. The intervening period was devoted to private negotiation. At the meeting on 13th November it appeared, however, that despite every effort on the part of the negotiators, it had unfortunately proved impossible to devise any scheme of such a character as to satisfy all parties. The representatives of the Muslims, Depressed Classes, Anglo-Indians, a section of the Indian Christians* and the European commercial community intimated that they had reached an agreement *inter se*, which they formally presented for the consideration of the Committee, and which is printed as Appendix III to this Report. But the course of the discussion on 13th November made it clear that the agreement in question was not regarded as acceptable by the Hindu or Sikh representatives, and that there seemed no prospect of a solution of the communal question as the result of negotiation between the parties concerned.

6. The Committee has, in these circumstances, to record with deep regret that it has been unable to reach any agreed conclusion on the difficult and controversial question which has been the subject of its deliberations.

7. It was agreed at the meeting of 13th November that statements or proposals which had been submitted by the representatives of various interests with the object of finding a satisfactory solution of the problem before the Committee or of inviting attention to aspects of that problem of special importance to the community they represented, should be appended to the Report of the Committee. The documents in question are accordingly printed as Appendices.

8. During the various discussions suggestions were made that the British Government should settle the dispute on its own authority. These suggestions, however, were accompanied by such important reservations that they afforded little prospect of any such decision securing the necessary harmony in working, but the Prime Minister, as Chairman of the Committee, offered to act, and give a decision of temporary validity, if he were requested to do so by every member of the Committee signing an agreement to pledge himself to support his decision so as to enable the constitution to be put into operation, further efforts for an all-Indian settlement being pursued in the meantime.

Signed, on behalf of the Committee,

J. RAMSAY MACDONALD.

St. James's Palace, London.

18th November, 1931.

* Rao Bahadur A. T. Pannir Selvam subscribed to the Agreement, from which, however, Dr. S. K. Datta expressed dissent in the Minorities Committee.

APPENDIX I.

THE CONGRESS SCHEME FOR A COMMUNAL SETTLEMENT.

(Circulated at the request of Mr. M. K. Gandhi.)

However much it may have failed in the realisation, the Congress has, from its very inception, set up pure nationalism as its ideal. It has endeavoured to break down communal barriers. The following Lahore resolution was the culminating point in its advance towards nationalism:—

> "In view of the lapse of the Nehru Report it is unnecessary to declare the policy of the Congress regarding communal questions, the Congress believing that in an independent India communal questions can only be solved on strictly national lines. But as the Sikhs in particular, and the Muslims and the other minorities in general, have expressed dissatisfaction over the solution of communal questions proposed in the Nehru Report, this Congress assured the Sikhs, the Muslims and other minorities that no solution thereof in any future constitution will be acceptable to the Congress that does not give full satisfaction to the parties concerned."

Hence, the Congress is precluded from setting forth any communal solution of the communal problem. But at this critical juncture in the history of the Nation, it is felt that the Working Committee should suggest for adoption by the country a solution though communal in appearance, yet as nearly national as possible and generally acceptable to the communities concerned. The Working Committee, therefore, after full and free discussion, unanimously passed the following scheme:—

1. (*a*) The article in the constitution relating to Fundamental Rights shall include a guarantee to the communities concerned of the protection of their cultures, languages, scripts, education, profession and practice of religion and religious endowments.

(*b*) Personal laws shall be protected by specific provisions to be embodied in the constitution.

(*c*) Protection of political and other rights of minority communities in the various Provinces shall be the concern and be within the jurisdiction of the Federal Government.

2. The franchise shall be extended to all adult men and women.

NOTE A.—The Working Committee is committed to adult franchise by the Karachi resolution of the Congress and cannot entertain any alternative franchise. In view, however, of misapprehensions in some quarters, the Committee wishes to make it clear that in any event the franchise shall be uniform and so extensive as to reflect in the electoral roll the proportion in the population of every community.)

3. (*a*) Joint electorates shall form the basis of representation in the future constitution of India.

(NOTE B.—Wherever possible the electoral circles shall be so determined as to enable every community, if it so desires, to secure its proportionate share in the Legislature.)*

(*b*) That for the Hindus in Sind, the Muslims in Assam and the Sikhs in the Punjab and N.-W. F. P. and for Hindus and Muslims in any Province where they are less than 25 per cent. of the population, seats shall be reserved in the Federal and Provincial Legislatures on the basis of population with the right to contest additional seats.

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* Note B is not part of the scheme but has been added by me as not being inconsistent with the scheme. (Intld.) M.K.G.

4. Appointments shall be made by non-party Public Service Commissions which shall prescribe the minimum qualifications, and which shall have due regard to the efficiency of the Public Service as well as to the principle of equal opportunity to all communities for a fair share in the Public Services of the country.

5. In the formation of Federal and Provincial Cabinets interests of minority communities should be recognised by convention.

6. The N.-W. F. Province and Baluchistan shall have the same form of government and administration as other Provinces.

7. Sind shall be constituted into a separate Province, provided that the people of Sind are prepared to bear the financial burden of the separated Province.

8. The future constitution of the country shall be federal. The residuary powers shall vest in the federating Units, unless, on further examination, it is found to be against the best interest of India.

The Working Committee has adopted the foregoing scheme as a compromise between the proposals based on undiluted communalism and undiluted nationalism. Whilst on the one hand the Working Committee hopes that the whole Nation will endorse the scheme, on the other, it assures those who take extreme views and cannot adopt it, that the Committee will gladly, as it is bound to by the Lahore resolution, accept without reservation any other scheme, if it commands the acceptance of all the parties concerned.

October 28th, 1931.

APPENDIX II.

MEMORANDUM ON THE CONGRESS FORMULA OF COMMUNAL SETTLEMENT.

By Dr. B. S. Moonje.

On behalf of the Hindu Mahasabha, I, as its working president, hereby express my whole-hearted approval to the assurance given by the Congress, that " no solution thereof (*i.e.*, of communal question) in any future constitution will be acceptable to the Congress that does not give full satisfaction to the parties concerned."

As for the details of the scheme, of the communal solution, I have to suggest amendments as follows:—

(1) In clause 1 (*a*) and (*b*) regarding the fundamental rights, the following should be added as (*c*):—

> " None shall be prejudiced by reason of his caste or creed in acquiring or enjoying civil and economic rights including the right of owning, purchasing or disposing of landed estates in the open market, and of freedom of choice of any profession or calling, and all laws existing at present, and acting prejudicially to the enjoyment of these rights should automatically lapse."

(2) In clause 2, note (*a*), the words " if possible " be added after the words " so extensive as to reflect." The object is to remove the ambiguity of the meaning of the note as it stands. It should clearly mean that in any event the franchise should be uniform, irrespective of the fact whether it reflects or does not reflect in the electoral roll the proportion in population of every community.

(3) The clause 3 (*b*) should be modified as follows:—

> That in any scheme of minority protection by reservation of seats, no minority community in any Province should have reservation below its population strength and it must have the right to contest additional seats.

(4) The clause 4 be modified as follows:—

(*a*) That no person shall be under any disability for admission to any branch of Public Service merely by reason of his religion or caste.

(*b*) That in any Province and in connection with the Central Government, a Public Service Commission be appointed and recruitment to Public Services be made by such a Commission on considerations of highest efficiency and qualification available for any particular Service, thereby securing the twofold object of maintaining the Services on a high level of efficiency, and leaving open a fair field for competition to all communities to secure fair representation.

Minimum qualification will not make for efficiency. Public Services constitute the soul of Swarajya. We cannot afford to put up with less efficiency in our Swarajya than at least what prevails at present under British responsibility. But if we aspire, as we should, to have our Swarajya prospering in competition with that of Nations of Europe and America, we ought not to think lightly of efficiency even with the object of placating this or that so-called backward community. Considerations, therefore, of maintaining efficiency in administration at the highest possible standard makes it obligatory to demand the highest necessary qualification from those who offer themselves for recruitment to Public Services irrespective of considerations of caste or creed.

(*c*) That membership of any Community caste or creed should not prejudice any person for purposes of recruitment, or be a ground for promotion or supersession in any Public Service.

(5) The clause 5 be modified as follows:—

That as regards formation of Federal and Provincial Cabinets, political exigencies will inevitably lead to proper conventions, suitable to the conditions then existing in the different Legislatures. Therefore without interfering with the constitutional freedom of party leaders who have to form Cabinets, in the choice of their Ministers, representatives of minorities of considerable numbers should, as far as possible, be included in the formation of Central and Provincial Cabinets.

(6) The clause 7 be modified as follows:—

As is freely and unreservedly admitted by no less a person than Sir Shah Nawaz Bhutto, a most influential representative of the Sind Muslims in the Round Table Conference, in his interview published in the Times of India, August 1st, 1931, "question of separation of Sind is not the creation of outside politicians, nor is it a part of communal politics." Therefore the question should have no bearing whatsoever on what is known as the problem of communal settlement. It should be considered purely on merit, and it cannot be so considered unless the problem is entrusted for consideration to a Boundaries Commission of experts. If, however, the Government were to accept the separation of Sind, ignoring the opposition of the Hindus of Sind, who have not been given any representation on this Round Table Conference, and the Hindu Mahasabha, to placate the Muslims, it will then be impossible to resist the claim of Sikhs for accepting their scheme of the partition of the Punjab to satisfy the Sikhs.

(7) The clause 8 dealing with the question of residuary powers should be modified as follows:—

That the question of vesting the residuary powers in the federating Units or in the Central Government is in essence a purely constitutional problem, and thus the opinion of the constitutional experts should prevail. But broadly speaking, it shall be in the best interest of the country as a whole that they should be vested in the Central Government rather than in the federating Units. A strong Central Government is the only sure protective agent of the constitutional rights and liberties of the federating Units.

(8) As for the general question of joint versus separate electorates it should be noted that the scheme of separate electorates was devised for the protection of the minority community. A community which is in majority in any Province is not therefore legitimately entitled to demand separate electorates. But the Hindu Mahasabha has a fundamental objection to the system of separate electorates, and thus we cannot agree to it for reasons which have been so eloquently expressed by Sir Austen Chamberlain in the League of Nations in the following words:—

> "It was certainly not the intention of those who have devised the system of minority protection, to establish in the midst of a Nation a community which would remain permanently estranged from national life. The object of minorities treaties was to secure that measure of protection and justice for the minorities which would gradually prepare them to be merged in the national community to which they belong."

It is well worth to quote here also what the Greek representative, Mr. Dendramis, in the Council of the League of Nations said:—"The authors of the treaties (Minorities Treaties) had not intended to create a group of citizens who would collectively enjoy special rights and privileges; they had intended to establish equality of treatment between all nationals of a State. If privileges were granted to the minority in any country, inequality would be created between this minority and the majority. The latter would be oppressed by the minority, and it would then be the majority which would have to engage the attention of the League of Nations."

It is perhaps not generally known that the total number of the Muslims (about 20 millions) living in the Provinces with the Hindu majority is very much smaller than that of the Hindus (about 30 millions) who live in the Provinces with Muslim majority. But the Hindus have always felt the confidence of being able to hold their own in competition with their Muslim majorities without the adventitious aids of protection such as separate electorates, etc.

But if the Government were still to maintain separate electorates for the Majority community in any Province, it should confer on the minorities of that Province the privilege of demanding joint electorates with the majority. If a minority community in any province were thus to elect for joint electorates, the constitution should provide for the establishment of joint electorates in that case irrespective of the fact whether the majority community does, or does not, consent.

APPENDIX III.

PROVISIONS FOR A SETTLEMENT OF THE COMMUNAL PROBLEM, PUT FORWARD JOINTLY BY MUSLIMS, DEPRESSED CLASSES, INDIAN CHRISTIANS,* ANGLO-INDIANS AND EUROPEANS.

Claims of Minority Communities.

1. No person shall by reason of his origin, religion, caste or creed, be prejudiced in any way in regard to public employment, office of power or honour, or with regard to enjoyment of his civic rights and the exercise of any trade or calling.

2. Statutory safeguards shall be incorporated in the constitution with a view to protect against enactments of the Legislature of discriminatory laws affecting any community.

3. Full religious liberty, that is, full liberty of belief, worship observances, propaganda, associations and education, shall be guaranteed to all communities subject to the maintenance of public order and morality.

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* *See also* note by Dr. S. K. Datta, Appendix XVIII, page 1438.

No person shall merely by change of faith lose any civic right or privilege, or be subject to any penalty.

4. The right to establish, manage and control, at their own expense, charitable, religious and social institutions, schools and other educational establishments with the right to exercise their religion therein.

5. The constitution shall embody adequate safeguards for the protection of religion, culture and personal law, and the promotion of education, language, charitable institutions of the minority communities and for their due share in grants-in-aid given by the State and by the self-governing bodies.

6. Enjoyment of civic rights by all citizens shall be guaranteed by making any act or omission calculated to prevent full enjoyment an offence punishable by law.

7. In the formation of Cabinets in the Central Government and Provincial Governments, so far as possible, members belonging to the Mussulman community and other minorities of considerable number shall be included by convention.

8. There shall be Statutory Departments under the Central and Provincial Governments to protect minority communities and to promote their welfare.

9. All communities at present enjoying representation in any Legislature through nomination or election shall have representation in all Legislatures through separate electorates and the minorities shall have not less than the proportion set forth in the Annexure but no majority shall be reduced to a minority or even an equality. Provided that after a lapse of ten years it will be open to Muslims in Punjab and Bengal and any minority communities in any other Provinces to accept joint electorates, or joint electorates with reservation of seats, by the consent of the community concerned. Similarly after the lapse of ten years it will be open to any minority in the Central Legislature to accept joint electorates with or without reservation of seats with the consent of the community concerned.

With regard to the Depressed Classes no change to joint electorates and reserved seats shall be made until after 20 years' experience of separate electorates and until direct adult suffrage for the community has been established.

10. In every Province and in connection with the Central Government a Public Services Commission shall be appointed, and the recruitment to the Public Services, except the proportion, if any reserved to be filled by nomination by the Governor-General and the Governors, shall be made through such commission in such a way as to secure a fair representation to the various communities consistently with the considerations of efficiency and the possession of the necessary qualifications. Instructions to the Governor-General and the Governors in the Instrument of Instructions with regard to recruitment shall be embodied to give effect to this principle, and for that purpose—to review periodically the composition of the Services.

11. If a Bill is passed which, in the opinion of two-thirds of the members of any Legislature representing a particular community affects their religion or social practice based on religion, or in the case of fundamental rights of the subjects if one-third of the members object, it shall be open to such members to lodge their objection thereto, within a period of one month of the Bill being passed by the House, with the President of the House who shall forward the same to the Governor-General or the Governor, as the case may be, and he shall thereupon suspend the operation of that Bill for one year, upon the expiry of which period he shall remit the said Bill for further consideration by the Legislature. When such Bill has been further considered by the Legislature and the Legislature concerned has refused to revise or modify the Bill so as to meet the objection thereto, the Governor-General or the Governor, as the case may be, may give or withhold his assent to it in the exercise of his discretion, provided, further, that the validity of such Bill may be challenged in the Supreme Court by any two members of the denomination affected thereby on the grounds that it contravenes one of their fundamental rights.

SPECIAL CLAIMS OF MUSSULMANS.

A. The North-West Frontier Province shall be constituted a Governor's Province on the same footing as other Provinces with due regard to the necessary requirements for the security of the Frontier.

In the formation of the Provincial Legislature the nominations shall not exceed more than 10 per cent. of the whole.

B. Sind shall be separated from the Bombay Presidency and made a Governor's Province similar to and on the same footing as other Provinces in British India.

C. Mussulman representation in the Central Legislature shall be one-third of the total number of the House, and their representation in the Central Legislature shall not be less than the proportion set forth in the Annexure.

SPECIAL CLAIMS OF THE DEPRESSED CLASSES.

A. The constitution shall declare invalid any custom or usage by which any penalty or disadvantage or disability is imposed upon or any discrimination is made against any subject of the State in regard to the enjoyment of civic rights on account of Untouchability.

B. Generous treatment in the matter of recruitment to Public Service and the opening of enlistment in the Police and Military Service.

C. The Depressed Classes in the Punjab shall have the benefit of the Punjab Land Alienation Act extended to them.

D. Right of Appeal shall lie to the Governor or Governor-General for redress of prejudicial action or neglect of interest by any Executive Authority.

E. The Depressed Classes shall have representation not less than set forth in the Annexure.

SPECIAL CLAIMS OF THE ANGLO-INDIAN COMMUNITY.

A. Generous interpretation of the claims admitted by sub-Committee No. VIII (Services) to the effect that in recognition of the peculiar position of the community special consideration should be given to the claim for public employment, having regard to the maintenance of an adequate standard of living.

B. The right to administer and control its own educational institutions, *i.e.*, European education, subject to the control of the Minister.

Provisions for generous and adequate grants-in-aid and scholarships on the basis of present grants.

C. Jury rights equal to those enjoyed by other communities in India unconditionally of proof of legitimacy and descent and the right of accused persons to claim trial by either a European or an Indian jury.

SPECIAL CLAIMS OF THE EUROPEAN COMMUNITY.

A. Equal rights and privileges to those enjoyed by Indian-born subjects in all industrial and commercial activities.

B. The maintenance of existing rights in regard to procedure of criminal trials, and any measure or bill to amend, alter, or modify such a procedure cannot be introduced except with the previous consent of the Governor-General.

Agreed by:—

HIS HIGHNESS THE AGA KHAN (Muslims),
DR. AMBEDKAR (Depressed Classes),
RAO BAHADUR PANNIR SELVAM (Indian Christians),
SIR HENRY GIDNEY (Anglo-Indians),
SIR HUBERT CARR (Europeans).

ANNEXURE.

Representation in Legislatures.

Figures in brackets = Population basis 1931 figures and depressed percentages as per Simon Report.

—	Strength of Chamber.	Hindu.			Muslims.	Christians.	Sikhs.	Anglo-Indians.	Tribal, etc.	Europeans.	—
		Caste.	Depressed.	Total.							
Centre.											
All India (1931).											
Upper . . .	200	(47·5) 101	(19)* 20	(66·5) 121	(21·5) 67	1	6	1	—	4	* Represents percentage in Governor's Provinces of B. I.
Lower . . .	300	123	45	168	100	7	10	3	—	12	
Assam	* 100	(48·9) 38	(13·4) 13	(62·3) 51	(34·8) 55	3	—	1	—	10	* Pop. figures exclude Tribal Areas.
Bengal . . .	200	(18·3) 38	(24·7) 35	(43) 73	(54·9) 102	2	—	3	—	20	
Bihar and Orissa .	100	(67·8) 51	(14·5) 14	(82·3) 65	(11·3) 25	1	—	1	3	5	

ANNEXURE.

Representation in Legislatures.

Figures in brackets = Population basis 1931 figures and depressed percentages as per Simon Report.

—	Strength of Chamber.	Hindu.			Muslims.	Christians.	Sikhs.	Anglo-Indians.	Tribal, etc.	Europeans.	—
		Caste.	Depressed.	Total.							
Bombay . . .	200	(68) 88	(8) 28	(76) 116	(20) 66	2	—	3	—	13	On Sind being separated weightage Mussulmans in Bombay to be on the same footing as to the Hindus in the N. W. F. P.
C. P. . . .	100	(63·1) 58	(23·7) 20	(86·8) 78	(44) 15	1	—	2	2	2	
Madras . . .	200	(71·3) 102	(15·4) 40	(86·7) 142	(7·1) 30	(3·7) 14	—	4	2	8	
Punjab . . .	100	(15·1) 14	(13·5) 10	(28·6) 24	(56·5) 51	1·5	(13) 20	1·5	—	2	
U. P. . .	100	(58·1) 44	(26·4) 20	(84·5) 64	(14·8) 30	1	—	2	—	3	
Sind and N. W. F. P.	Weightage similar to that enjoyed by the Mussulmans in the Provinces in which they constitute a minority of the population, shall be given to the Hindu minority in Sind and to the Hindu and Sikh minorities in the N. W. F. P.										

EXPLANATORY MEMORANDUM TO APPENDIX III.

1. The suggested details for community representation have not been agreed by the Hindus or the Sikhs, but the full representation claimed by the latter in the Central Legislature is provided for.

2. The proposed distribution of seats for the different minorities constitutes a whole scheme and the detailed proposals cannot be separated one from another.

3. This distribution of seats follows the principle that in no case is the majority community to be reduced to the position of a minority or even equality.

4. No representation is provided for Commerce, Landlords, Industry, Labour, etc., it being assumed that these seats are ultimately communal and that communities desiring special representation for these interests may do so out of the communal quota.

5. The allowance of 33⅓ per cent. representation to Muslims in the Central Legislature is based on the assumption that 26 per cent. shall be from British India and at least 7 per cent. by convention out of the quota assigned to the Indian States.

6. In the Punjab the suggested common sacrifice by the Muslims, Caste Hindus and the Depressed Classes, would permit of a weightage of 5½ per cent. being given to the Sikhs, giving them representation of 20 per cent. in the Legislature.

7. The proposals may be taken as being acceptable to well over 115 millions of people, or about 46 per cent. of the population of India.

APPENDIX IV.*

SIKHS AND THE NEW CONSTITUTION FOR INDIA.

Memorandum by Sardar Ujjal Singh and Sardar Sampuran Singh.

The Sikhs are an important and distinct community, mainly concentrated in the Punjab, of which they were the rulers until 1849. Sikhism recognises no caste and strictly enjoins upon those who profess it to treat all human beings as equal. In religious ideals and social practices they are as different from the Hindus as the Muslims are.

The Simon Commission states: "Sikhism remained a pacific cult until the political tyranny of the Mussulmans and the social tyranny of the Hindus converted it into a military creed. It is a striking circumstance that this small community contributed no less than eighty thousand men" (actually, 89,000 combatant recruits, in addition to 30,000 already serving when war broke out) "to serve in the Great War—a larger proportion than any other community in India."

The Sikhs play a great part in the economic and civic life of the country. In the Punjab, with three million population (13 per cent. of the whole), the Sikhs pay 25 per cent. of the land revenue and 40 per cent. of the land revenue and water rates combined, the main source of the Provincial Exchequer. They maintain at their own expense over 400 schools and 3 colleges, open to all communities and classes without distinction. They have got a large number of holy shrines, which are the centres of Sikh culture and tradition.

The Sikhs claim that their interests should be adequately and effectively protected in the future constitution. On account of their unrivalled position in the Punjab—historical, political and economic—they claim 30 per cent. representation in the Provincial Legislature. This demand is not unreasonable when it is remembered that the Muslim minority in the United Provinces, with a corresponding population, are enjoying 31 per cent. At the last Round Table Conference, in a spirit of accommodation, we came down to 24

* *See also* Appendix XIX.

per cent. The Muslims, wherever they are a minority, claim weightage. In the Punjab they claim to have their majority ensured by Statute. The Simon Report observes: "It would be unfair that Muhammadans should retain the very considerable weightage they now enjoy in the six Provinces, and that there should at the same time be imposed, in face of Hindu and Sikh opposition a definite Muslim majority in the Punjab and in Bengal unalterable by any appeal to the electorate." Moreover, the Muslims' demand for this majority is made on a basis of separate electorates, which means that the other two communities could not even influence the permanent majority, chosen as it would be by constitutents swayed by none but communal motives and aims. It is a denial of the fundamental rights of a community that it should be put in a position which allowed of no peaceful method of appeal against a government that proved itself incompetent or partisan, especially if that government was so constituted as to stereotype and perpetrate religious differences which go back to bitter memories. In view of the claim of the President of the last All-India Muslim Conference, we believe that to write the garrison Province of India into the constitution as an unalterably Muslim Province would be to make the dismemberment of India inevitable. That claim, it will be remembered, was that there should be a "consolidated North-West State, within or without the British Empire," consisting of the Punjab, North-West Frontier Province, Baluchistan and Sind. We cannot accept a constitution which relegates us for all time to the position of an ineffective opposition.

If the Muslims refuse to accept in this Province, where they are in a slight majority in population (56 per cent.), anything but their present demand of a reserved majority, we ask for a territorial re-arrangement which would take from the Punjab the Rawalpindi and Multan divisions (excluding Lyallpur and Montgomery districts). These divisions are overwhelmingly Muslim, as well as racially akin to the North-West Frontier Province; their inclusion in the Punjab is a recent thing, due to conquest by Ranjit Singh. These overwhelmingly Muslim districts, with a population of seven millions can either form a separate Province, which will give the Muslims another majority Province, or be amalgamated with North-West Frontier. This re-arrangement would leave a Punjab of about sixteen millions in which no single community would have an absolute majority and each community would be obliged to conciliate the others. If this solution also is unacceptable to our Muslim brethren we should prefer no change from the present constitution in the Punjab.

A counter proposal of partition of the Punjab has emanated from Sir Geoffrey Corbett, which is open to serious economic and racial objections and which is based upon an absolute misunderstanding of the Sikh position. The main object of any scheme of territorial redistribution should be to satisfy the conflicting claims of the Muslims and the Sikhs in the Punjab. But this scheme seeks to increase still further the Muslim majority by the separation of Ambala division from the Punjab and thereby places the Sikhs in a far worse position than any in which they would find themselves in the existing Punjab. It is therefore entirely unacceptable to the Sikhs.

We summarise below the unanimous demands of the Sikh community for which any scheme of new constitution should make provision before it can be accepted by the Sikhs.

Punjab.

1. The Sikhs are anxious to secure a National Government and are therefore opposed to any communal majority by Statute or any reservation of seats by law for a majority community.

2. The Sikhs occupy an unrivalled position in the Punjab as is reflected by their sacrifices in the defence of India, and in national movements and their stake in the Province, and therefore demand 30 per cent. representation in the Punjab Legislature and Administration.

3. In the Punjab Cabinet and the Public Service Commission the Sikh community should have a one-third share.

4. If no agreement is reached on the above basis, the boundaries of the Punjab may be so altered by transferring predominently Muhammadan areas to the Frontier Province so as to produce a communal balance. In this reconstituted Punjab there should be joint electorates, with no reservation of seats.

5. If neither of the above alternatives is acceptable, the Punjab may be administered by the newly constituted responsible Central Government till mutual agreement on the communal question is arrived at.

6. Punjabi should be the official language of the Province. It should be optional with the Sikhs and others to use Gurmukhi script if they so desire.

Central.

7. The Sikhs should be given 5 per cent. of the total number of seats reserved for British India in each of the Upper and Lower Houses.

8. There should always be at least one Sikh in the Central Cabinet.

9. In case an Army Council is constituted the Sikhs should be adequately represented on it.

10. The Sikhs have always had a special connection with the Army and therefore the same proportion of Sikhs should be maintained in the Army as before the War.

11. The Sikhs should have effective representation in the all-India Services and should be represented on Central Public Service Commission.

12. All residuary powers should vest in the Central Government.

13. The Central Government should have special specified powers to protect minorities.

Other Provinces.

14. The Sikhs should have the same weightage in other Provinces as is accorded to other minorities.

General.

15. The Provincial and Central Government should declare religious neutrality and while maintaining existing religious endowments should not create new ones.

16. The State should provide for teaching of Gurmukhi script where a certain fixed number of scholars is forthcoming.

17. Any safeguards guaranteed in the constitution for the Sikhs should not be rescinded or modified without their express consent.

November 12th, 1931.

APPENDIX V.

CLAIMS OF THE HINDU MINORITY OF THE PUNJAB.

Memorandum by Raja Narendra Nath.

I enclose a Memorandum which sets forth the claims of the Hindu minority of the Punjab; but I believe that my views are shared by the Hindus of all Provinces in which they are in a minority. I may here mention that the number of Hindus in Provinces in which they are in a minority (assuming that Sind is separated) comes up to nearly 29 millions, and the number of Muslims in which they are in a minority (proceeding on the assumption of the separation of Sind) comes to only about 20 millions. In a Federal system of government in which the Provinces are autonomous, the question of Minorities in Provinces assumes very great importance. The Hindu minority point of view deserves as much, if not greater, consideration than the point of view of the Muslim minority. A disregard of Hindu interests will create resentment and discontent among a larger number of human beings than a

disregard of the interests of the Muslim minorities so far as Provincial Governments are concerned. The political leaders of different Parties in England have declared more than once that the future of the constitution of India must create a feeling of security among the minorities. No such feeling of security will be produced among the Hindus if the claims put forward in the enclosed Memorandum are disregarded.

The Memorandum is brief, and therefore does not deal with reasons on which the claims are based.

1. The Hindus look upon separate electorates as prejudicial to the interests of a minority community. But if the constitution must begin with separate electorates, and it is not provided that they cease after five years, then the Hindus want the following clause to be inserted in the constitution:—

For election to all elected bodies—

(i) The voters of a minority community shall be brought on the same register with the voters of another minority community if the members of the elected body representing the two minority communities pass a resolution or make a requisition to the Head of Government supported by a majority of two-thirds of each community severally that the change be made.

(ii) The voters of a minority community shall be brought on the same register with the voters of a majority community when the members belonging to the minority community in that body pass a resolution or make a requisition to the Head of the Government supported by a majority of two-thirds that the change be made.

(iii) In either case the change shall be made in the election next following.

Although the Hindu minority is better educated than most of the other minorities, they object to any plan of referendum on this point to the Hindu minority. The proposing of the resolution or the making of the requisition referred to in the above clause must be left to the discretion of the representatives of the electorates in the elected bodies.

I may here mention that the fear of the Punjab Muslims that even in tracts in which Muslims are in a majority, the Hindu minority, on account of their intelligence and wealth, will swamp the elections, is unfounded and is not borne out by the result of elections to the District Board. In districts in which Muslims predominate, Hindus fail in elections to the Board.

The Hindus of the Punjab have no objection to separate electorates for the Europeans and Anglo-Indians or for Christians and Depressed Classes. I doubt, however, if all these classes in the Punjab want separate electorates. In July last a Conference of Hindus, Sikhs and Christians was held at Lahore, which I attended, and resolutions in support of joint electorates were passed. On the 11th September last, whilst passing through Delhi, an Address was presented to me by the Depressed Classes in which they protested against their being separated from the Hindus. However, if there has been a change in their attitude and they want separate electorats in the Punjab, I have no objection.

2. The Hindus of the Punjab want reservation of seats, both in the Provincial Council and the Federal Assembly, in proportion to their population. If special constituencies are retained, as I presume they will be, only such constituencies should be reckoned in making up this proportion as have a majority of Hindu voters.

I may here remark, with regard to the population figures of the Depressed Classes and their proportion in the population of each Province, given at page 40 of Vol. I of the Report of the Statutory Commission, that the figures no longer hold good for the Punjab. Enormous increase has taken place in the Sikh and Muslim population of the Punjab, the number of Sikhs having gone up from 2,294,207 in 1921 to 3,064,144 in 1931, and the number of Muslims from 11,444,321 to 13,332,460, which means an annual increase

during the last ten years of nearly 76,000 in the case of the Sikhs, and of 188,000 in the case of the Muslims. This extraordinary increase in the case of both these communities has presumably taken place by the absorption of Depressed Classes within their ranks. On the other hand, a new religious community designated " Adi-Dharmis " is shown in the census figures for the first time in the Punjab. This presumably represents the number of Depressed Classes or at least those who want to be separated from other religious communities. Their number is 399,307 or 1·7 per cent. of the total population of the Province. The proportions given in the Simon Report, therefore, cannot be taken as a guide so far as the Punjab is concerned.

3. I understand that a claim about the services has been put forward by other minorities. They want that a minimum standard of education should be fixed with due regard to efficiency, and that each community should have a fair and adequate share. The Hindu minority think that a vague provision like this will be prejudicial to their interests. A minimum standard of education " with due regard to efficiency " alludes to two incompatible factors. If efficiency has to be borne in mind, why should the requisite standard of education be low? The Hindus want that the constitution should contain a direction indicated in para. 105 of Despatch No. 44 of the Court of Directors, dated 10th December, 1834—" But the meaning of the enactment we take to be that there shall be no governing caste in India and that whatever tests of qualifications may be adopted *distinction of race and religion shall not be of the number.*"

No one, on account of his caste or creed, should be prejudiced in any way for recruitment to Public Services or for promotion to any office, but a proportion, the maximum of which may now be found, may be reserved for a certain number of years to redress communal inequalities and to suit backward classes. There is no need for lowering the general standard of efficiency for all recruits. The Government of India have reserved 33 per cent. of the appointments to the Imperial Services for this purpose. The same rule should be adopted with regard to the Provincial and Subordinate Services. The fixation of proportions should not be left to the discretion of the Head of the Executive or of the Public Services Commission to be appointed by him.

4. The Prime Minister in his speech, dated 19th July, 1931, said as follows:—

> " In framing the constituiton, His Majesty's Government considers it will be its duty to insert provisions guaranteeing to the various minorities, in addition to political representation, that differences of religion, race, sect or caste, shall not themselves constitute civic disabilities."

The clause defining fundamental rights is all right, but I suggest the addition of the following words:—

> " and shall not prejudice anyone in the exercise and enjoyment of civic and economic rights."

(See para. 3 of the last Report of the Minorities sub-Committee.)
November 13th, 1931.

APPENDIX VI.

MEMORANDUM.

*By Dr. B. S. Moonje.**

The Hindu Mahasabha's opinion on the Muslim demands is as follows:—

1. The Hindu Mahasabha holds strongly the view that communal representation is fundamentally opposed to nationalism and gradually creates an increasing desire for the assertion of communal difference in various depart-

* This Memorandum was first submitted during the First Session of the Conference.

ments of public administration. The Sabha also thinks that this principle in unsuited to responsible Government in which preferences based on communal distinctions are out of place. In the working of responsible Government full freedom should be given for the growth of healthy adjustments satisfactory to the desire of minorities to take their proper place in the public life of the country. These adjustments, however, are born of experience and are the result of goodwill and understanding, which must have some time given to them to assert themselves. The Sabha, therefore, is of opinion that the future *Swaraj* in India should be laid on sound lines and no arrangements should be made here which will have the result, as experience shows, of increasing the communal tension, or of keeping the minorities in isolated compartments from one another or from the majority community. The Sabha, therefore, wishes to state that the following principles should be kept in view in framing any constitution for India:—

(*a*) That there shall be uniformity of franchise for all communities in each Province.

(*b*) That elections to all the elective bodies shall be by mixed electorates.

(*c*) That there shall be no reservations of seats on communal considerations on any of the elective bodies and educational institutions. But to start with, if a minority community in any Province were to demand a reservation of seats, such reservation may be granted only in the Legislatures for a short period.

(*d*) That the basis of representation of different communities shall be uniform, such as voting strength, taxation or adult population.

(*e*) That in no circumstances shall there be any reservation of seats in favour of any majority community in any Province.

(*f*) That the redistribution of Provinces in India, if and when necessary, shall be made on merits in the light of principles capable of a general application with due regard to administrative, financial and other similar considerations.

(*g*) That no new Provinces shall be created with the object of giving a majority therein to any particular community so that India may be evolved as one united nation, instead of being subdivided into Muslim India, Sikh India, Christian India and Hindu India.

2. Regarding the Muslim demand for separation of Sind, the Hindu Mahasabha, while agreeing to the principle or redistribution of Provinces as stated above in Section 1, sub-section 2, is opposed to it for the following reasons:—

(*a*) The creation of any new Provinces primarily or solely with a view to increase the number of Provinces in which a particular community shall be in majority is fraught with danger to the growth of sound patriotism in the country and will contribute to the growth of a sentiment favouring the division of India into different groups according to differences of religion.

(*b*) Redistribution of any Province without the consent and agreement of the two communities, Hindu and Muslim, is likely to increase the area of communal conflict and endanger the relations between the two communities not only in that Province, but throughout India. The Hindu community in Sind is against such separation.

(*c*) Separation of Sind will not only be financially a costly proposition, but would also arrest its economic development and its educational advancement. Besides, it will deprive the people of Sind of the many undeniable benefits of their association with the more advanced people of the Bombay Presidency in their economic as well as their political development.

(*d*) Sind, if separated, may not be able to bear the financial burden of carrying on a separate administration without help either from the Central or the Bombay Government.

(e) Bombay has invested large amounts of money, particularly in the Sukkur Barrage, and that alone will be a great impediment to separation, at any rate for some years to come.

3. Regarding the introduction of reforms in the North-West Frontier Province and Baluchistan on the same footing as the other Provinces, the Hindu Mahasabha has in principle no objection, but it considers it an impracticable proposition for the immediate future. The Hindu Mahasabha, therefore, proposes that immediate steps be taken to secure to the Province with as little delay as possible the benefits of a regular system of administration, both judicial and executive, so that the Province may be prepared for the reformed constitution.

4. As regards the demand for provision giving the Muslims an adequate share in the Public Services of the State, the Hindu Mahasabha holds that there shall be no communal representation in the Public Service, which must be open to all communities on the basis of merit and competency, ascertained through open competitive taste.

5. As regards the Muslim demand that no Cabinet, either Central or Provincial shall be formed without there being a proportion of Muslim Ministers, the Hindu Mahasabha cannot approve of the proposal, as it is a negation of the wholesome principle of joint responsibility of the Cabinet. In the future responsible Government the Cabinet will be formed by the Chief Minister selecting his own men, as in other self-governing countries. The Hindu Mahasabha, therefore, is of opinion that nothing shall be done to fetter his freedom to make his own selection of his colleagues on the Cabinet. He will naturally select such colleagues irrespective of their communities as will ensure strength and stability to the Cabinet.

6. As regards representation of minorities in the Legislatures, Central, or Provincial, the Hindu Mahasabha stands for joint electorates, and a temporary provision for, say, the lifetime of the next two Legislatures, for reservation of seats for the minorities on the basis of their adult population or their voting strength, whichever shall be favourable to them. The system of reservation shall automatically disappear after the lapse of the period fixed.

7. Regarding the demand for vesting residuary powers in the Provincial Governments, the Hindu Mahasabha cannot agree to it, and stands for strong Central Government.

8. The Hindu Mahasabha stands for full religious liberty, *i.e.*, liberty of belief, worship, observance, propaganda, association and education to be guaranteed to all communties alike, provided these rights are not exercised in such a way as to be provocative, offensive or obstructive to others.

9. The Hindu Mahasabha believes in the potency of joint electorates to further the cause of evolution of India as one united nation, but if the Muslims believe that they cannot do without separate electorates the Hindu Mahasabha will be reluctantly obliged to agree to it, provided that the Muslims adhere to the Lucknow Pact, and its provisions are not contravened or exceeded. The Hindu Mahasabha is of the opinion that it would be unfair to allow the Muslims to take all the benefits given to them under that arrangement for separate electorates, and also to claim other concessions.

10. The above statement is without prejudice to the Hindu Mahasabha's contention that the Muslims in India, having regard to their numerical strength and other circumstances, are not a minority of such a nature as the League of Nations has in view when it considers the claims of minorities. The Muslims in India are a numerically strong, well organised, vigorous and potent body with great facilities for self-development. There are other minorities like the Depressed Classes, Christians, Parsees, etc., who are infinitely weaker than the Muslims in all material respects, and the Sabha thinks it would be difficult to resist the claims of these minorities to concessions similar to those demanded by the Muslims if these are granted to the Muslims. The Sabha is anxious that India should not be split up on the very threshold of a new constitution, besides the Sabha is and always has been willing that all minorities including the Muslims, which require special protec-

tion in the matter of religion, education and culture, should have the fullest opportunities for self-development, self-expression and self-protection. On a perusal of the arrangements made by the League of Nations in the case of many minorities in new provinces formed in Europe after the War, it will be clear that in no case have any claims been allowed like those the Muslims are putting forward in India.

11. The Sabha is willing that the whole of the Hindu-Muslim problem should be referred to individuals, or to a body like the League of Nations, who have dealt with such questions in the past, and have experience of them in other countries. It is necessary that the Hindu-Muslim problem should be examined by impartial men, who have experience of such questions, and who will have the courage to solve them with impartiality.

12. The Hindu Mahasabha here feels the need of emphasising the point that the League of Nations, while providing for full legitimate protection to the minroities in matters concerning their religion, culture and social customs, has scrupulously refrained from discriminating the nationals of a State on the basis of their religions, cultures of languages, as is demanded by the Muslims of India in the public administration of the country, where, according to the League of Nations, principles of freedom and equality in the political, economic and legal spheres should prevail.

The Sabha concludes this statement by saying that in the solution of this communal question the caution must ever be borne in mind which was voiced by an expert of the League of Nations who was called upon to examine the minorities question, in his report as follows:—

> "It seems to me obvious that those who conceived this system of protection (of minorities) did not dream of creating within certain States a group of inhabitants who would regard themselves as permanently foreign to the general organisation of the country. . . . . We must avoid creating a State within a State, we must prevent the minority from transforming itself into a privileged class, and taking definite form as a foreign group instead of becoming fused in the society in which it lives. If we take the exaggerated conception of the autonomy of minorities to the last extreme, these minorities will become a disruptive element in the State and a source of national disorganisation."

SUPPLEMENTARY STATEMENT BY DR. B. S. MOONJE.

FUNDAMENTAL RIGHTS.

1. The Hindu Mahasabha stands for making provision in the constitution for full protection of the different cultures, religions, languages, script and personal laws of the different minorities.

2. As for civic and economic rights none shall be prejudiced by reason of his caste or creed in acquiring or enjoying those rights which should expressly include the rights of owning, purchasing or disposing of landed properties in the open market without any restrictions of any kind whatsoever and of freedom of choice of any profession or calling. All laws existing at present in India based on caste discriminations similar to those existing in Kenya based on colour prejudices, and are acting prejudicially to the enjoyment of these rights should automatically lapse.

That no person shall be under any disability for admission to any branch of public service merely by reasons of his religion or caste.

Membership of any community or caste or creed should not prejudice any person for purposes of recruitment to public services or be a ground for non-admission, promotion or supersession in any public service.

RECRUITMENT TO PUBLIC SERVICES.

3. As for the method of recruitment to public services, there should be appointed a Public Services Commission in every Province and in connection with the Central Government. The recruitment to public services should be

made by such a Commission on considerations of highest efficiency and qualifications necessary and available for any particular service, by open competition, thereby securing the two-fold object of maintaining the services on a high level of efficiency and leaving open a fair field of competition to all communities to secure fair representation.

Minimum qualifications will not make for efficiency. The public services constitute the soul of self-Government. It will not be safe to have less efficiency in administration than at least what prevails at present under British responsibility, but if the aspiration be, as it should be, to have our self-government in India prospering in competition with that of the nations of Europe and America it will not do to think lightly of efficiency even with the object of plating this or that so-called backward community. Considerations therefore of maintaining efficiency in administration at the highest possible standard make it obligatory to demand the highest necessary qualifications from those who offer themselves for recruitment to public services, irrespective of caste or creed.

FRANCHISE.

4. As for Franchise, it may be made as extensive as possible but it should be uniform for all communities in each Province irrespective of the fact whether it does or does not reflect in the electoral roll the proportion in population of every community in the Province.

ELECTORATES, JOINT OR SEPARATE.

5. As for the general question of joint *versus* separate electorates it should be noted that the scheme of separate electorates was devised for the protection of a minority community. A community which is in majority in any Province is not therefore legitimately entitled to demand separate electorates. But the Hindu Mahasabha has a fundamental objection to the system of separate electorates and thus cannot agree to it for reasons which have been so eloquently given expression to by Sir Austen Chamberlain in the League of Nations in the following words:—

> "It was certainly not the intention of those who have devised the system of the minorities protection to establish in the midst of a nation a community which would remain permanently estranged from national life. The object of the Minorities Treaty was to secure that measure of protection and justice for the minorities which would gradually prepare them to be merged in the national community to which they belong."

In this connection it is well worth quoting what the Greek representative, Mr. Dendramis, in the Council of the League of Nations, has said:—

> "The authors of the treaties (Minorities Treaties) had not intended to create a group of citizens who would collectively enjoy special rights and privileges. They had intended equality of treatment between all the nationals of a State. If privileges were granted to minorities in any country, inequality would be created between this minority and the majority. The latter would be oppressed by the minority and it would then be the majority which would have to engage the attention of the League of Nations.

This description will very appropriately apply to the situation in India that will arise if the Muslim demands are conceded. It is perhaps not generally known that the total number of Muslims (about twenty millions) living in the Provinces with Hindu majority is very much smaller than that of the Hindus (about thirty millions) who live in Provinces with Muslim majority. But the Hindus have always felt the confidence of being able to hold their own in competition with their Muslim majorities, without the adventitious aids of protection, such as separate electorates, reservation in services, etc.

The Constitutional difficulty that is created by the Moslem demand for separate electorates cannot be brought to light more vividly than in the

following words of the Prime Minister in his speech in the House of Commons in January last:—

> "If every constituency is to be ear-marked, as to community or interest, there will be no room left for the growth of what we consider to be purely political organisations which would comprehend all the communities, all creeds, all conditions of faith . . . . If India is going to develop a robust political life, there must be room for national political parties based upon conceptions of India's interests and not upon the conceptions regarding the well-being of any field that is smaller or less comprehensive than the whole of India."

But if the Government were still to maintain separate electorates for the majority community in any Province, it should at least confer on the minorities of that Province the privilege of demanding joint electorates with the majority. If a minority community in any Province were thus to elect for joint electorates the constitution should provide for the establishment of joint electorates in that case irrespective of the consent thereto of the majority community.

Protection of Minorities.

6. The Hindu Mahasabha being fundamentally opposed to separate electorates, and to provision of protection by reservation of seats for a majority community in any Province, if any scheme of minority protection be devised by reservation of seats in the joint electorates, then no minority community in any Province should have reservation below its population strength, and it must also have the right to contest additional seats on equal terms with all others.

Weightage in Representation.

7. As for the demand for weightage in representation, it is impossible to entertain the proposal in view of the entirely separatist mentality which has inspired the demands. The impracticability of the demand cannot be emphasised in better words than in those of no less a person than the Prime Minister himself who says in his speech in the House of Commons:—

> "It is very difficult again to convince these very dear delightful people that if you give one community weightage, you cannot create weightage out of nothing. You have to take it from somebody else. When they discover that, they become confused indeed and find that they are up against a brick wall."

But if the principle of weightage be still maintained it would be only proper and just that uniformity be observed in fixing the proportion of weightage for all minorities.

Formation of Cabinets.

8. As regards formation of Central Federal and Provincial Cabinets, political exigencies will inevitably lead to proper conventions suitable to the conditions then existing in the different Legislatures. Therefore, without interfering with the constitutional freedom of the party leaders who are to form the Cabinets, in the choice of their Ministers, representatives of the minorities of considerable numbers should as far as possible be included in the formation of Central and Provincial Cabinets.

Residuary Powers.

9. As regards the question as to whether the residuary powers should be vested in the Federating units or in the Central Government, it is in essence a purely constitutional problem, where opinions of constitutional experts should prevail. But broadly speaking it will be in the best interests of the country as a whole that they should be vested in the Central Government rather than in the Federating units. A strong Central Government is the

only sure protecting agent of the constitutional rights and liberties of the Federating units and also of the minorities in the Provinces.

Separation of Sind.

10. As for the question of separation of Sind, it is freely and unreservedly admitted by no less a person than Sir Shah Nawaz Bhutto, a most influential representative of the Sind Muslims on the Round Table Conference, in his interview published in the *Times of India* of August 1st, 1931, that "the question of the separation of Sind is not the creation of the outside politicians nor is it a part of the communal politics." Therefore the question should have no bearing whatsoever on what is known as the problem of communal settlement. It should be considered purely on merit and it cannot be so considered unless the problem is entrusted to a Boundaries Commission of experts.

In this connection it ought to be noted that there was no representative of the Sind Hindus on the Round Table Conference and its Sind sub-Committee. The decision of the Committee therefore is regarded by the Hindus of Sind as *ex parte*, and is repudiated by them and the Hindu Mahasabha as such. If, however, the Government were still to accept the separation of Sind, ignoring the protests of the Sind Hindus and the Hindu Mahasabha, simply to placate the Muslims, it would then be impossible to resist the claim of Sikhs for accepting their scheme of partition of the Punjab to satisfy the Sikhs.

Outlook on Problem of Minorities.

11. In fact the whole question of minorities is beintg looked at from a most unnatural point of view under the plausible excuse of protection for minorities. As Edmund Burke has said:—

> "Parliament is not a congress of Ambassadors from different and hostile interests, which interests each must maintain as an agent and advocate against other agents and advocates, but Parliament is a deliberative Assembly of one nation with one interest, that of the whole people; where not local purposes, not local prejudices ought to guide, but the general good resulting from the general reason of the whole." *16th November, 1931.*

APPENDIX VII.

* SUPPLEMENTARY MEMORANDUM ON THE CLAIMS OF THE DEPRESSED CLASSES FOR SPECIAL REPRESENTATION.

By Dr. Bhimrao R. Ambedkar and Rao Bahadur R. Srinivasan.

In the memorandum that was submitted by us last year dealing with the question of political safeguards for the protection of the Depressed Classes in the constitution for a self-governing India, and which forms Appendix III to the printed volume of Proceedings of the Minorities sub-Committee, we had demanded that special representation of the Depressed Classes must form one of such safeguards. But we did not then define the details of the special representation we claimed as being necessary for them. The reason was that the proceedings of the Minorities sub-Committee came to an end before the question was reached. We now propose to make good the omission by this supplementary memorandum so that the Minorities sub-Committee, if it comes to consider the question this year, should have the requisite details before it.

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* For previous memorandum *see* Appendix III to Proceedings of the Minorities sub-Committee of the First Session of the Conference.

I.—Extent of special representation.

A. Special Representation in Provincial Legislatures.

(i) In Bengal, Central Provinces, Assam, Bihar and Orissa, Punjab and the United Provinces, the Depressed Classes shall have representation in proportion to their population as estimated by the Simon Commission and the Indian Central Committee.

(ii) In Madras the Depressed Classes shall have twenty-two per cent. representation.

(iii) In Bombay:—

(*a*) In the event of Sind continuing to be a part of the Bombay Presidency the Depressed Classes shall have sixteen per cent. representation.

(*b*) In the event of Sind being separated from the Bombay Presidency the Depressed Classes shall enjoy the same degree of representation as the Presidency Muslims, both being equal in population.

B. Special Representation in the Federal Legislature.

In both Houses of the Federal Legislature the Depressed Classes shall have representation in proportion of their *population in India.*

Reservations.

We have fixed this proportion of representation in the Legislatures on the following assumptions.—

(1) We have assumed that the figures for the population of the Depressed Classes given by the Simon Commission (Vol. I, p. 40) and the Indian Central Committee (Report p. 44) will be acceptable as sufficiently correct to form a basis for distributing seats.

(2) We have assumed that the Federal Legislature will comprise the whole of India, in which case the population of the Depressed Classes in Indian States, in Centrally Administered Areas, and in Excluded Territories, besides their population in Governor's Provinces, will form very properly an additional item in calculating the extent of representation of the Depressed Classes in the Federal Legislature.

(3) We have assumed that the administrative area of the Provinces of British India will continue to be what they are at present.

But if these assumptions regarding figures of population are challenged, as some interested parties threaten to do, and if under a new census over which the Depressed Classes can have no control the population of the Depressed Classes shows a lower proportion, or if the administrative areas of the Provinces are altered, resulting in disturbing the existing balance of population, the Depressed Classes reserve their right to revise their proportion of representation and even to claim weightage. In the same way, if the all-India Federation does not come into being, they will be willing to submit to readjustment in their proportion of representation calculated on that basis in the Federal Legislature.

II.—Method of Representation.

1. The Depressed Classes shall have the right to elect their representatives to the Provincial and Central Legislature through separate electorates of their voters.

For their representation in the Upper House of the Federal or Central Legislature, if it is decided to have indirect election by members of the Provincial Legislatures, the Depressed Classes will agree to abandon their right to separate electorates so far as their representation to the Upper House is concerned subject to this: that in any system of proportional representation arrangement shall be made to guarantee to them their quota of seats.

2. Separate electorates for the Depressed Classes shall not be liable to be replaced by a system of joint electorates and reserved seats, except when the following conditions are fulfilled:—

(*a*) A referendum of the voters held at the demand of a majority of their representatives in the Legislatures concerned and resulting in an absolute majority of the members of the Depressed Classes having the franchise.

(*b*) No such referendum shall be resorted to until after twenty years and until universal adult suffrage has been established.

III.—Necessity of defining the Depressed Classes.

The representation of the Depressed Classes has been grossly abused in the past inasmuch as persons other than the Depressed Classes were nominated to represent them in the Provincial Legislatures, and cases are not wanting in which persons not belonging to the Depressed Classes got themselves nominated as representative of the Depressed Classes. This abuse was due to the fact that while the Governor was given the power to nominate persons to represent the Depressed Classes, he was not required to confine his nomination to persons belonging to the Depressed Classes. Since nomination is to be substituted by election under the new constitution, there will be no room for this abuse. But in order to leave no loophole for defeating the purpose of their special representation we claim—

(i) That the Depressed Classes shall not only have the right to their own separate electorates, but they shall also have the right to be represented by their own men.

(ii) That in each Province the Depressed Classes shall be strictly defined as meaning persons belonging to communities which are subjected to the system of untouchability of the sort prevalent therein and which are enumerated by name in a schedule prepared for electoral purposes.

IV.—Nomenclature.

In dealing with this part of the question we would like to point out that the existing nomenclature of Depressed Classes is objected to by members of the Depressed Classes who have given thought to it and also by outsiders who take interest in them. It is degrading and contemptuous, and advantage may be taken of this occasion for drafting the new constitution to alter for official purposes the existing nomenclature. We think that they should be called "Non-caste Hindus", "Protestant Hindus", or "Non-conformist Hindus", or some such designation, instead of "Depressed Classes". We have no authority to press for any particular nomenclature. We can only suggest them, and we believe that if properly explained the Depressed Classes will not hesitate to accept the one most suitable for them.

We have received a large number of telegrams from the Depressed Classes all over India supporting the demands contained in this Memorandum.

November 4th, 1931.

APPENDIX VIII.

MEMORANDUM ON THE CLAIMS OF INDIAN CHRISTIANS.

By Rao Bahadur A. T. Pannir Selvam.

Some of the statements made by the Congress representative and the attitude of the Indian National Congress towards the vital needs of the minority interests make it imperative that I should re-state my case on behalf of the Indian Christians.

Mr. Gandhi was reported to have said in last March as follows: "If instead of confining themselves to purely humanitarian work and material

service to the poor, they (the foreign missionaries) limit their activities as they do at present, to proselytising by means of medical aid, education, etc., then I would certainly ask them to withdraw. Every nation's religion is as good as any other. Certainly India's religions are adequate for her own people. We need no converting spiritually." This provoked criticisms and aroused fears and suspicions all round.

Replying to " correspondents angry or curious," Mr. Gandhi characterised, in his *Young India* of April 23rd, the report as a travesty of his views, and explained: " If instead of confining themselves to purely humanitarian work such as education, medical services to the poor, and the like, they would use these activities of theirs for the purpose of proselytising, *I would certainly like them to withdraw*. Every nation considers its own faith to be as good as that of any other. Certainly India's religions are adequate for her people. India stands in no need of conversion from one faith to another . . ."

The rejoinder did not, however, improve the position.

Now, Mr. Gandhi undeniably occupies the unique position of leader, even dictator, of the strongest organised political body in India, which presumably is destined to be the ruling power in the event of *Swaraj*. One might, therefore, justifiably assume Mr. Gandhi's statement to be indicative of the policy of the future governing class towards all proselytising faiths The Christian community has been selected for the first warning, probably because of their comparative numerical helplessness. Naturally enough, Mr. Gandhi's words have been received with a stir of genuine apprehension by the great majority of Indian Christians. Subsequently he had " no doubt that in India under *Swaraj* foreign missionaries will be at liberty to do this proselytising ' in the wrong way ' ".

Further, the Congress resolution on the question of fundamental rights was studiedly silent on the question of proselytising or preaching religion, although Mr. George Joseph, one time lieutenant of Mr. Gandhi, had specially written on the subject to the Convenor of the Subjects' Committee and had a reply to the effect that there would be no difficulty.

If the fears and anxieties of a minority community, such as mine, as to their right of freedom of conscience under a *Swaraj* Government, are to be allayed, I feel that there should be some statutory provision such as the following in the future constitution of the country:—

> " 1. Every person of whatever race, caste, creed, or sex shall have the right to freely and openly profess, practice, and preach his religion, subject to public order and morality. He shall also have the right to convert by peaceful, legitimate, and constitutional methods, others to his faith.
>
> 2. No person shall, merely by reason of his change of faith, lose any of his civil rights or privileges or be subject to any penalty.
>
> 3. Persons belonging to any religion shall have a right to establish, manage, and control at their own expense, charitable, religious, and social institutions, schools, and other educational establishments, with the right to exercise their religion therein; and where specific sums of money from public funds, as set out in the State Budget or in the Budget of local or other public authorities, are to be devoted to education, religion, or philanthropy, a due share in the use and enjoyment of such sums shall be secured to these institutions as well."

Again, the attitude of the Congress spokesman to the representation of minorities in the legislative bodies has been peculiarly curious. If he had ruled out definitely all special representations, his position would have been intelligible. Having agreed to special representation of the Hindus, the Sikhs and the Muslims, how could the same privilege, in fairness, be denied to the other communities? Mr. Gandhi's " historical grounds " are hardly historical! Students of real history know that Christianity in India is at least centuries older than the Mussalman invasion of the country; and was flourishing in the land before the origins of Sikhism. Christians have played a very prominent part in the building up of the public weal,

and are therefore entitled to the same consideration as the sister communities. Mr. Gandhi's "historical grounds", it would appear, have reference to the Lucknow and other Congress resolutions. The Christians as a community have never been a party to any of the pacts or resolutions of the Congress, and they should therefore not be denied with impunity their rights for adequate separate representation in the future Legislatures of their country.

The Christians are, after all, the third largest religious community in India, numerically much superior to the Sikhs. The social and economic condition of the Christians, and the fact that they are scattered about the country, make it essential that their representation should be through a separate electorate of their own. Reservation of seats in a joint electorate is impracticable in their case, and would hardly safeguard or serve their interests.

I claim, therefore, on behalf of the Indian Christian community, that, in addition to the elemental right to profess, practice, and act up to the teachings of their religion, they should be given the right of representation through a separate electorate in the various legislative bodies of the new constitution, and that they should be given such other privileges and rights as may be conceded to the other minority communities in India.

October 20th, 1931.

APPENDIX IX.

FUNDAMENTAL RIGHTS TO BE INCORPORATED IN THE NEW CONSTITUTION FOR INDIA FOR THE ANGLO-INDIAN AND DOMICILE EUROPEAN COMMUNITY.

Memorandum by Sir Henry Gidney.

To give effect to the resolution passed in the Services sub-Committee, Clause 5 (4) of which reads:—

"The sub-Committee recognise the special position of the Anglo-Indian community in respect of public employment and recommend that special consideration should be given to their claims for employment in the Services," the Anglo-Indian community demands the inclusion of the following clauses in the Fundamental Rights.

(1) *Political rights as a community* with adequate representation in both Federal and Provincial Legislatures in proportion to their part in the life of the country and the right of electing their own representatives.

(2) *Employment in Services.*—It shall receive special employment on a living wage, based on their standard of living, in the Executive and Ministerial Services in every administrative department of the State.

(*b*) That the same number of Anglo-Indians and domiciled Europeans per centum of the total number of persons employed in such Services as are employed on the date on which the new constitution comes into force shall continue for 30 years after the operation of the new constitution; subject only to the condition that a sufficient number of Anglo-Indians possessing the requisite qualifications is available.

(3) *Education.*—(*a*) Subject to the powers and control of the Executive Minister it shall be given the right to administer and control its own educational institution, *i.e.*, European education, and, if it so desires, it shall be permitted to levy an educational cess from its own members for the support of its education.

(*c*) European education shall be specially protected by

(1) the retention of the present grants-in-aid and the generous grant of an adequate number of scholarships;

(2) the creation of an Education Trust Fund, the equivalent of the present total annual expenditure on European education, to which shall be added the funds of the Uncovenanted Service Family Pension

Fund and of any other similar Funds created and maintained by members of the community for the moral, educational, or material benefit of Anglo-Indians whether already closed, or about to be closed, owing to the demise of the beneficiaries thereunder or for any reason whatever. The income accruing to the said Trust shall be utilised for the purpose of granting educational scholarships to the members of the community.

(4) *Jury rights.*—All racial discrimination shall be eliminated in jury trials and Anglo-Indians shall be given equal jury rights with other communities in India, by

(*a*) the demand of " by legitimate descent " now made of the Anglo-Indian alone being deleted from the provisions of the Criminal Procedure Code, Sec. 4, Clause (1), Sub-Clause (ii);

(*b*) the accused, whoever he be, being given the right of claiming trial by either a European or an Indian jury and the words " or European as he may desire ", being added to Section 275, Clause (i), and Section 284 (*a*), Clause (i).

DECLARATION OF RIGHTS SUBMITTED BY COL. GIDNEY FOR ALL MINORITY COMMUNITIES TO BE INCORPORATED IN THE NEW CONSTITUTION FOR INDIA ON 19TH JANUARY, 1931.

1. *Definition.*—A community shall be classified as a minority community if it shall be notified as such in the Gazette of India.

2. *Fundamental Right.*—All subjects of the State in India are equal before the law and possess equal civic rights [U. S. A. Constitution Amendment XIV and Government of Ireland Act, 1920, 10 and 11, Geo. V., Ch. 67, sec. 5 (2)]. Any existing enactment, regulation, order, custom or interpretation of law by which any penalty or disability is imposed upon or any discrimination is made against any subject of the State shall, as from the day on which this constitution comes into operation, cease to have any effect in India.

3. *Representation on Legislatures.*—Adequate representation on the Federal and Provincial Legislatures.

4. *Separate Electorates.*—All minority communities who so desire shall be given separate electorates which shall be retained till 75 per cent. of a community consent to forego the right, and desire otherwise.

5. *Public Service Commission.*—(*a*) In addition to the Public Service Commission already functioning under the Government of India, there shall be created a Public Service Commission in each Province charged with the duty of recruiting for the Public Services.

(*b*) Minority communities shall be collectively represented by not less than one of its members on each Provincial Commission and on the Commission already functioning under the Government of India. These representatives shall be nominated by the Governor-General or the Governor as the case may be.

(*c*) It shall be the duty of the Public Service Commission, subject to the test of efficiency as may be prescribed—

(1) to recruit for the Services in such a manner as shall secure due and adequate representation of all communities, and

(2) to regulate from time to time priority in employment in accordance with the existing extent of representation of the various communities in any particular service.

6. *Representation in Cabinets.*—(1) In the Federal Cabinet, one Minister and two Parliamentary Under-Secretaries shall be chosen from and be collectively representative of the minority communities.

(2) In each Provincial Cabinet one Minister and one Parliamentary Under-Secretary shall be chosen from and be collectively representative of the minority community.

(3) Such Ministers shall be nominated by the Governor-General or the Governor as the case may be and given a special portfolio with a special Statutory Department for the protection of minority interests.

N.B.—If No. 6 cannot be statutorily enacted it should be incorporated in the Instrument of Instructions to the Governor-General and Governors as a specific mandate to them, with powers to act in such matters independently of the views of their Ministry.

7. *Appeal.*—Should the Federal Government or any Provincial Governments fail to comply in any or all of the foregoing provisions an appeal shall lie in the case of an order of the Federal Government to the Secretary of State for India or any other higher tribunal, and in the case of the Provincial Government to the Federal Government in the first place, and from the order of the Federal Government to the Secretary of State for India or any other higher tribunal.

APPENDIX X.

THE MARATHAS AND ALLIED COMMUNITIES.

Memorandum by Mr. B. V. Jadhav.

When the Montagu-Chelmsford Reforms were under consideration the non-Brahmins of Madras and the Marathas of Bombay started an agitation to protect their interests from the dominant influence of the advanced communities. In the Government of India Act of 1919 their claims were recognised and some seats were reserved for them in multiple seat constituencies.

The non-Brahmin movement in Madras is co-extensive with the boundaries of that Province, and in all the four elections they have been able to secure more seats than were reserved to them, and hardly any occasion may have arisen when the concession of reserved seats came into operation. Nobody in Madras is therefore keen on preserving the right of reserved seats.

In the Bombay Presidency the conditions are different. There is, of course, the non-Brahmin movement there also, but it is confined to the Marathas and lingayets of the districts in which the Marathi and Canarese languages are spoken. In Sind and Gujerat the social conditions are vastly different, and there no Hindu community except the Depressed Classes asks for special protection. The Marathas and the allied communities, who have so far enjoyed protection under the reservation clause, are desirous that the concession should be continued for a further period.

It is to be noted that the Government of Bombay are of opinion that the concession is no longer necessary. This was probably due to the absence in the Government of anybody who knew the real condition of the people.

I urged that the concession should be continued.

Four elections were held since the passing of the Government of India Act in 1919. The first election of 1920 and the fourth of 1930 cannot be considered to be normal as the Congress in those years refused to take any part in them. In those years the elections were uncontested in many constituencies, and therefore the success of the Maratha candidates does not show that normally they are able to look after their own interests and do not require any protection. But the elections of 1923 and 1926 were hotly contested. The results of both these elections prove that in the City of Bombay no Maratha candidate would succeed if the right of a reserved seat was taken away. The same is proved by the fate of Maratha candidates in the Ahmednagar and Ratnagiri districts in 1926. Out of the six reserved seats, in three the right of reservation was claimed. The seventh reserved seat is not fixed, but is taken in turn by the districts of Sholapur, Kolaba and West Khandesh. In 1923 this seat was reserved in the Kolaba District but in the Sholapur and

West Khandesh districts it was open to all communities without reservation. In this year no Maratha candidate was elected either in Sholapur or West Khandesh.

Similarly, in the following election the seat was reserved in West Khandesh but left open to all communities in Kolaba, and there again the Maratha candidate failed. This will show that the Maratha and allied communities have not yet become sufficiently organised and therefore require protection for a further period.

The principle of reservation works as a safety valve. In ordinary circumstances it does not operate at all but automatically comes into operation only when an emergency arises. It is therefore not necessary to take away the right of reservation. When no longer necessary it will remain unused.

I therefore submit that the right of reserved seats should be continued as under the present Act.

November 13th, 1931.

APPENDIX XI.

LABOUR UNDER THE NEW CONSTITUTION.

Circulated by N. M. Joshi, Mr. B. Shiva Rao and Mr. V. V. Giri.

I am making this statement on the subject of Labour in the new constitution with the consent and approval of my two colleagues.

First, let me say a word as to the number of those who would come under the category of Labour. Precision is not possible in this matter, as the details of the Census Report of 1931 are not yet fully available. We include in the category of Labour all those who are wage-earners, whether in fields, plantations or factories. A memorandum was prepared in the India Office in 1921 and submitted to the Council of the League of Nations to urge the inclusion of India among the leading industrial states of the world. According to the figures mentioned in that memorandum, there were 27·8 million agricultural workers employed as farm servants and field labourers in India in 1911. This figure includes workers in the tea, coffee, rubber and indigo plantations, but does not include the much larger class of small holders and tenants who numbered at that time over 40 million. The estimate of workers in industries, mining and transport is given as approximately 20·2 million The total number of workers in India would, therefore, be 48 million.

This was in 1911. During the last 20 years there has been an increase in general population by about 10 per cent. Cultivation has been extended and industries have been developed on a considerable scale. Our estimate of the total number of workers at the present moment is, therefore, between 55 and 60 million. Of these, an appreciable number is drawn from the Depressed Classes, whose representatives have put forward their special needs and claims, but what exact proportion they form is difficult to say without a proper enquiry. Nevertheless, it is safe to estimate that the rest of Labour, excluding for the moment those belonging to the Depressed Classes, would be about 35 million, or 10 per cent. of India's population.

(1) *A Declaration of Rights.*—At a meeting of the Minorities sub-Committee last year, Mr. Shiva Rao read out the Declaration of Rights which, in our opinion, should be inserted in the constitution. It may be enlarged to suit the requirements of other minorities, but so far as Labour is concerned, these points should find mention:—

"Recognising that the well-being, physical, moral and intellectual, of the workers of India is of supreme importance in assuring the peace, progress

and prosperity of the country, and recalling the solemn obligations of India as a Member of the League of Nations, and of the International Labour Organisation, to endeavour to secure and maintain fair and humane conditions of labour for men, women and children, and to collaborate in the international establishment of social justice, the Commonwealth declares the following principles to be accepted as fundamental principles of the constitution, and as regulating the exercise of the legislative, executive and judicial powers within the Commonwealth:—

(1) It is the duty of every citizen so to use his mental and bodily powers as to contribute to the welfare of the community, and correspondingly it is the duty of the community to secure, so far as lies in its power, that every citizen shall be given the training and opportunities necessary to enable him to maintain by his work a decent standard of living;

(2) The Indian Parliament shall make suitable laws for the maintenance of health and fitness of work of all citizens, the securing of a living wage for every worker, and provision against the economic consequences of old age, infirmity and unemployment;

(3) The protection of motherhood and the rearing of the rising generation to physical, mental and social efficiency are of special concern to the Commonwealth, Women, young persons and children shall, therefore, be protected against moral, spiritual or bodily injury or neglect and against exploitation and excessive or unsuitable employment;

(4) The welfare of those who labour shall be under the special protection of the Commonwealth and the conditions of Labour shall be regulated, from time to time as may be necessary, with a view to their progressive improvement;

(5) The right of workers to express their opinions freely by speech, writing or other means, and to meet in peaceful assembly and to form associations for the consideration and furtherance of their interests, shall be granted by the Commonwealth. Laws regulating the exercises of this right shall not discriminate againt any individual or class of citizens on the grounds of religious faith, political opinion or social position;

(6) No breach of contract of service or abetment thereof shall be made a criminal offence;

(7) The Commonwealth shall co-operate with other nations in action to secure the realisation of the principle of social justice throughout the world;

(8) All citizens in the Commonwealth have the right to free elementary education without any distinction of caste or creed in the matter of admission into any educational instructions maintained or aided by the State and such right shall be enforceable as soon as due arrangements shall have been made by competent authority;

(9) All citizens are equal before the law and possess equal civic rights;

(10) All citizens have an equal right of access to and the use of public roads, public wells and all other places of public resort."

(2) *Labour Legislation, a Federal Subject with concurrent powers to the Provincial Legislatures.*—Our next point is that labour legislation should be a federal subject, with power for the Provincial or State Legislatures also to legislate but not, as the Royal Commission on Labour observed in its Report issued a few months ago, " so as to impair or infringe the authority " of the Federal Legislature.

(3) *The Ratification of International Labour Conventions to be a concern of the Federal Government.*—We desire that the power to ratify International Labour Conventions should be vested in the Federal Government.

It is not necessary to elaborate either of these points, as they fall really within the scope of the discussions of the Federal Structure Committee, and I still hope I shall have an opportunity of raising them.

(4) *The Introduction of Adult Suffrage.*—For a similar reason I shall not do more than mention the point that the introduction of adult suffrage is vital from the workers' point of view. We found ourselves in a minority in advocating it in the Franchise sub-Committee last year; but we are glad to see that Mr. Gandhi and the Congress are also in favour of it, and we hope that with his powerful assistance we shall secure adult suffrage.

We shall have no objection, if on detailed enquiry, it be found that universal adult suffrage would be impracticable as the next stage, to some qualification being made, such as raising the age limit to 25 years, provided that the restriction applies equally to all classes. But we do ask for immediate recognition of the principle of adult suffrage in the terms of reference of the Expert Franchise Committee that is hereafter to be appointed.

(5) *Joint Electorates.*—We are opposed to the continuance of separate electorates for communities divided according to religion or race. Our experience of the Indian Trade Union movement strengthens our conviction in the efficacy and soundness of not dividing the community on a religious or racial basis. Communal and racial feelings have had comparatively little influence on the movement and the workers are organised as an economic class, not as Hindus, Muslims or Untouchables. Our grave fear is that communal electorates, with the introduction of adult suffrage, will create a false division among the workers and break the solidarity of the working-class movement. If the workers are divided not on the basis of an economic class, but of religion or race into Hindus and Muslims and Christians, etc., their proportion of votes in every constituency will be considerably less than if they are allowed to vote together as an economic class, and they are bound to lose the effect and influence they would possess. The vast majority of the workers are illiterate and heavily in debt. Only a small number of the industrial workers is as yet organised, and so far as those engaged in agriculture and on the plantations are concerned, they have been practically untouched by the working-class movement. Under these circumstances it would be an intolerable handicap on the workers to force on them a system of electorates based on religion or race, the demand for which proceeds, not from them, but only from a small section of the educated classes. Moreover, this wrong division will throw a powerful barrier in the way of the development of the movement and prevent the organisation of political forces on an economic basis. The communal problem we hold is a problem of the past. The real problems of the future will be economic and social and it would be wrong to build the constitution in a manner which has no relation to the realities of to-morrow.

We would prefer a division of the electorates on an occupational rather than a communal or a territorial basis, in order to bring into the Legislatures elements which, because of their lack of organisation and influence, might fail to secure adequate representation. But the least we can do now is to oppose the extension of the principle of electorates based on religion or race to the workers as being detrimental to their interests.

Our position is that if adult suffrage is introduced on a basis of joint electorates, and no other special interests are recognised, Labour will not ask for a reservation of seats or the creation of special constituencies. But in the event of even one of these conditions failing to the fulfilled, Labour must have both.

So far as the total number of Labour seats is concerned, we ask for no weightage. But representation of Labour can and must be on the population basis; that is, ten per cent. in the Federal Legislature, and if the decision ultimately be in favour of a bicameral system, then in each House of the Legislature. With regard to the Provincial Legislatures also, the numbers will have to be ascertained in each Province, and the seats allotted in their proportion to the total population of the area.

I cannot do better than quote the following passage from the Report of the Royal Commission on Labour with which we entirely agree:—

The Whitley Commission's Report observes (p. 462)—

> "There are several directions in which the adequate representation of Labour should benefit both itself and the community. In the first place, the presence of representatives able to voice the desires and aspirations of Labour and to translate these into concrete proposals is essential for the proper consideration of measures specially affecting Labour. But the welfare of Labour does not depend purely on what may be called labour measures; its good depends on the whole trend of policy and legislation. More adequate representation of Labour is necessary for its prospection in this respect, and, if given the opportunity, organised Labour can make a valuable contribution to the wise government of the Commonwealth. Further, the proper representation of Labour is itself educative; the recognition of its claims as a part of the body politic will bring increased responsibility and a sense of unity with the community as a whole. Conversely, exclusion of Labour from a fair share in the councils of the nation will inevitably drive it to rely unduly on other means of making itself felt with injury to itself and to the nation. What we have stated is applicable to labour generally, both agricultural and industrial, and those who have to deal with the representation of labour in detail will no doubt have regard to the whole field."

The Commission has also recommended, it is to be noted, that the principle of election should be substituted for that of nomination, and registered trade Unions should form special constituencies for the purposes of election. We accept these suggestions and trust that they will commend themselves to the Conference.

As regards agricultural and plantation labour, some other method of election will have to be devised, as there are no trade Unions among the workers of these two classes. But we do not think it will be impossible for the Expert Franchise Committee to make concrete suggestions on the point. The question is worth considering whether *Kisan Sabhas*, or organisations of agricultural workers, wherever they exist, may not be registered under a law analogous to the Trade Union Act and regarded as a special electorate. At all events, we ask the Conference to endorse, without qualification, the principle that these millions of workers are entitled to an adequate share in the government of their country.

November 13th, 1931.

APPENDIX XII.

MEMORANDUM FOR THE MINORITIES COMMITTEE.

By Sir Chimanlal Setalvad.

It is a thousand pities that the communal difficulties have not yet been solved by agreement of the parties concerned. It is essential for the smooth working of any self-government constitution for India that this matter should be settled by mutual goodwill and understanding and that a feeling of perfect security must be created in the minds of the minorities. But I am afraid that the present deadlock in the solution of the communal problem is being very much exaggerated and is being exploited in certain quarters for retarding the full constitutional advance which India demands.

A critical examination of the points of difference reveals that there is considerably more agreement than disagreement, and the controversial points are narrowed down to small proportions.

It is made to appear as if the Delegates belonging to the minority communities and the Deleagtes belonging to the majority communities are disagreed on almost every point. The fact is quite the contrary. There is really no difference of opinion on the question that proper safeguards must be provided for ensuring full religious liberty and protection of culture and personal laws of the minorities and that provision should be made against legislation affecting their religion, etc. Further, it is generally agreed that the minorities must be secured a proper share in the Services and, as far as practicable, in the Executive Government. In fact, formulas for these purposes were actually drafted and assented to by the representatives of the various communities last year and hardly anybody wants to go back upon them. The Services sub-Committee of the Conference last year in its Report recommended the text of the provisions to be made for securing to the minorities their proper share in the Services, etc.

As regards certain special demands of the Muslims, *e.g.*, the separation of Sindh and the status and constitution of the North-West Frontier Provinces, agreement was also reached to the satisfaction of the Muslims. As regards the Muslim claim for one-third representation in the Federal Legislature, there has been a general desire to agree to the same, and the question is merely one of method for securing the desired representation. Last year a formula was agreed to that the Muslims were to have one-third of the total number of elected members of British India and also one-third of any nominations of persons other than officials or members of any very small minority. The question of securing to the Muslims further seats so as to make up one-third of the total number of members was left for consideration in connection with the representation of the States. It should not be difficult to secure this by some convention with the States.

As regards the Muslim claim to be allowed the existing weightage in Provinces where they are in a minority there is not any appreciable opposition.

It will thus be seen that on all matters which are really vital and essential there is the largest measure of general agreement.

The disagreement extends to only two matters:—

1. Whether the Muslim and other minorities' representation is to be secured by means of separate electorates or by reservation of seats for them in joint electorates.

2. The allocation of seats in the local Legislatures of the Punjab and Bengal.

As regards the first question—namely, separate versus joint electorates—the question has been discussed threadbare both here and in India. It is obvious that in Provinces where the Muslims are in a minority their coming into the joint electorates is more in their interests and for their protection. Once effective safeguards are provided, as stated above, in the matter of religion, culture, personal laws, social practices, education, fair share in the public services, adequate representation in the Legislature, there is no clash or divergence of interest between the different communities, and it is really safer for the minorities to come into the joint electorates. For, unless the Muslim voters have a voice in the election of the majority community members, the former would have no hold on the latter. This has been recognised by important Muslim leaders such as H. H. the Aga Khan, Mr. Jinnah, and others, and if they are given reservation of seats they will be quite secure. But, whatever the real merits of this question may be, it is perfectly obvious that the Muslims cannot be forced against their wishes to come into the joint electorates.

If they want still to stick to separate electorates they must be allowed to have them. Keeping different communities in separate watertight compartments must inevitably prove a great obstacle in the evolution of national unity and national self-government and will render very difficult in practice the joint responsibility of the Cabinet. It is therefore urged that

separate electorates should not be extended farther than where they exist, and the other minorities should be secured their proper representation by reservation in joint electorates. What is hoped is that the Muslims and the Sikhs, after some experience of the new constitution of self-government for India, will see the advantage to themselves and the country of coming into joint electorates. It should therefore be provided that if at any time at least two-thirds of the Muslims' representatives in any Legislature decide in favour of joint electorates, thereafter joint electorates should be established for that Legislature. It is not therefore right to create at this juncture further separate compartments.

As regards the Depressed Classes, my sympathies and those of all right-thinking men are wholly with them. The treatment that they have received in the past and are suffering under even now reflects great discredit on the class Hindus who are responsible for the same; but it will not be patriotic for the Depressed Classes, because of their exasperation, to insist upon separate electorates. They should certainly be made secure by reservation of seats. The percentage of representation to be given to them must depend on various considerations—*e.g.*, the number of people available for the task—and not merely on the thumb rule of numerical proportion. At present in the Central Legislature they have only one seat, and that also by nomination. This is certainly wholly inadequate and unjust, and they should be given immediately a much larger number, to be progressively increased and brought up ultimately to their numerical proportion as by education and other means men fitted for this work become available.

The real and substantial points of disagreement are thus reduced only to the allocation of representation in the local Legislatures of the Punjab and Bengal. The discussions last year as well as this year show that Muslims may be satisfied if they are secured 51 per cent. representation in the Punjab and Bengal, which is less than their numerical proportion on population basis. The Hindus and Sikhs in the Punjab, and in Bengal the Hindus and Europeans (the latter community at present enjoys representation very much in excess of its numbers), must arrive at some adjustment. A question of a couple of seats here or there must not bar a settlement. If, however, communities concerned in these two Provinces are unable to reach agreement, surely their inability to arrive at an adjustment cannot be allowed to stand in the way of the country as a whole attaining self-government, when, as I have shown above, there is practically general agreement as regards all essential safeguards for minorities and there is no difficulty of allocation of representation in the Legislatures of all other Provinces. This particular and narrow issue should be left for decision by the Prime Minister and His Majesty's Government. There is no reason why the Muslims, Hindus, Sikhs, Depressed Classes and Europeans should not, without any hesitation, agree to abide by the decision of the Prime Minister. The Congress claims to be a non-communal body and to have a purely national outlook, and therefore it and its representative can have no objection to accepting any settlement which the communities concerned may arrrive at by this method of decision by the Prime Minister. One tentative and rough-and-ready solution for allocation of seats in the Punjab and Bengal is to accept the Government of India's proposals about it with such variation as may be required in view of the latest census figures.

There is one aspect of joint and separate electorates which I earnestly wish to be considered. I believe there are among the Muslims an appreciable number who prefer joint electorates. There is no reason why those preferring to be in the joint electorates should be denied their liberty of thought and action because the majority of their community wish to have separate electorates. It should be made permissible for members of any community for whom separate electorates are provided to declare their desire to go into joint electorates and be allowed to do so. On such declaration they should be included in the joint register and should be allowed to vote and stand for election in the joint electorate; but such declaration, when made, must ever afterwards be final.

Such a provision will demonstrate the strength of the opinion of those who believe in joint electorates, and will also afford an avenue for ultimately absorbing everybody into joint electorates as the strength of opinion in favour of joint electorates progressively grows.

For the views put forward and the suggestions made by me I beg my brother Delegates' unprejudiced consideration. They are capable of further adjustment wherever necessary, and I implore all to put their heads together for a solution. I have no communal bias and I belong to no communal organisation.

November 9th, 1931.

APPENDIX XIII.

REPRESENTATION OF WOMEN IN THE INDIAN LEGISLATURE.

Memorandum by Mrs. Subbarayan.

The framing of a new constitution for India offers an opportunity for considering fully the question of the representation of women on the Indian Legislatures of the future. It is obviously desirable that the ordinary channels of election should be open to women; but the question arises as to whether there is any likelihood of their securing election through the ordinary poll. Even in Western countries, where it has long been the custom for women to take part in public affairs, very few of them even now secure election to the Legislatures. In India they have only recently begun to emerge into public life, and, moreover, they are in a peculiar position owing to the social disabilities to which they have long been subject. Consequently there is bound to be strong prejudice on the part of both men and women against their coming into the Councils. There are also almost insurmountable practical difficulties to their candidature, such as that few women have sufficient means to stand, that—in our vast electoral areas—it would be extremely difficult for them to tour, to get into touch with voters, etc. It seems obvious that, for a considerable time, until the public becomes sufficiently educated, it is extremely unlikely that women will be returned in India through the ordinary poll. And yet, especially during the first vital and formative years of the new constitution, when the foundations of our social and educational policy (which affect women so closely) and indeed of our policy in all matters, are laid, it will be most important to have women on the Legislatures. They should be there in particular to impress on the Legislatures the necessity for social legislation, which is so urgently required. But besides that contribution to public life, their presence on the Legislatures should be a means of educating the public and of cultivating in women a due sense of responsibility and administration. Mahatma Gandhi, whose knowledge of political conditions in India is unsurpassed, during his speech at the Federal Structure Committee on September 17th, visualised the possibility of women not being elected to the Legislatures, and indicated his belief that some arrangement should be made to meet this eventuality. If some special provision for securing their presence is not made, it is possible—indeed likely—that their claims will recede further and further into the background. It will have a great effect if, from the start, it is shown in practice as well as in theory, that the co-operation of women on the Legislatures is normal and desirable.

There is considerable support in India for the view that some special provision is necessary. I have received large numbers of letters from women doing important social and educational work in many parts of India, asking me not to fail to press this view on the Conference, otherwise I should have been slow to put it forward. Delegates have no doubt also received a Memorandum opposing it from three women's organisations in India—organisations whose views I sought last year, but was not fortunate enough

to secure. Their opposition is apparently based on the belief that, if equality of civic rights is granted to women in India, equality of opportunity in civic service will automatically follow, and that, owing to the part played by women in the recent political struggle, women now realise their strength and do not require special provision. These theories seem to me to be far removed from the realities of the situation. These three women's organisations are associations of importance, but I cannot admit that they speak for the entire womanhood of India. While welcoming the fact that the political struggle has brought many thousands of women out into public life, I feel it essential to acquire a true perspective of the whole picture, and to realise that there remain over a hundred and twenty million women and girls in India, who are still in a state of civic inertia, and who have not yet attained self-confidence or political consciousness. It is for the sake of this overwhelming majority of women that I believe special provision to be necessary. I am convinced that one practical step forward, which will ensure the presence of women on the Legislatures, working side by side with men as a normal feature of our political life, will do more for them than any theories of equality.

The opposition to special provision for women in this Memorandum is also based on the assumption that Adult Suffrage will come into existence. Even if Adult Suffrage is secured, I think the above arguments hold good. If, however, Adult Suffrage is not achieved, or only gradually achieved, then special provision will be all the more necessary.

I have given much anxious thought to the form which such special provision should take. Nomination is obviously unsuitable. The ordinary reservation of seats, involving separate electorates, appropriation of a share of existing seats, and a permanent claim to them, is equally undesirable. The solution which the Women's Delegation advanced last year (*see* Minorities sub-Committee proceedings, page 80)—namely, that the Legislatures themselves, after their own election, should for a temporary period elect a fixed proportion of women to Legislatures—still seems to me the most suitable. The suggestion then also made—that the proportion of women to be elected should be five per cent. of the elected Legislature, that the temporary period should be for three elections, and that the election of women should be made by proportional representation so as to avoid the complications of the communal question, also seem to me still to be the best fitted to the circumstances. I would, however, now—in order to meet the divergence of views among Indian women on this matter—make a further suggestion, namely, that such a scheme might be *optional* on all Legislatures, Central or Provincial, to adopt or not as they think fit.

It may well be that some other proposal better than the above outlined scheme—one that would attain the same end—may be devised, and in that case I would willingly accept it. In this matter, I regard myself as a member of no party, community or class, but simply as voicing the views of an educated and intelligent section of women's opinion in India, which believes special provision for women to be in the best interests of women in general and in those of the nation at large (which must inevitably be closely identified with women's interests). It does not seem to us that it is in the least derogatory to ask for such special provision to meet existing facts; nor can it be considered either a privilege or a favour. Indeed, membership of a Legislature, in our opinion, is a heavy responsibility and a duty rather than a privilege or a favour. If we are told that there is no analogy for such a proposal in the constitutions of other countries, I would urge that in this matter we should not be entirely guided by outside precedents. Indeed, the experience of women in other countries suggests that Indian women will be wise in taking steps to strengthen their political status from the very beginning of the new constitution. If such a special measure as has been suggested above for the initial and transitional period could be made, I feel that the position of women in the India of the future would be made secure.

November 11th, 1931.

APPENDIX XIV.

MEMORANDUM REPRESENTING THE VIEWS OF A NUMBER OF INDIAN WOMEN'S ORGANISATIONS.

Presented to the Conference by Mrs. Naidu and Begum Shah Nawaz.

We herewith beg to submit the official Memorandum jointly issued on the status of Indian women in the proposed new Constitution by the All-India Women's Conference on Education and Social Reform, the Women's Indian Association and the Central Committee of the National Council of Women in India. These three premier Organisations include the great majority of progressive and influential women of all communities, creeds and ranks who are interested in social, educational, civic or political activities, and are accredited leaders of organised public opinion amongst women.

This Manifesto, signed by the principal office bearers of these important bodies, may be regarded as an authoritative statement of representative opinion, duly considered and widely endorsed, on the case and claim of Indian women.

We have been entrusted with the task of presenting to the Round Table Conference their demand for a complete and immediate recognition of their equal political status, in theory and practice, by the grant of full adult franchise, or an effective and acceptable alternative, based on the conception of adult suffrage.

We are further enjoined to resist any plea that may be advanced by small individual groups of people, either in India or in this country, for any kind of temporary concessions or adventitious methods of securing the adequate representation of women in the Legislatures in the shape of reservation of seats, nomination or co-option, whether by Statute, Convention, or at the discretion of the Provincial and Central Governments. To seek any form of preferential treatment would be to violate the integrity of the universal demand of Indian women for absolute equality of political status.

We are confident that no untoward difficulties will intervene in the way of women of the right quality, capacity, political equipment and record of public service in seeking the suffrages of the nation to be returned as its representatives in the various Legislatures of the country.

We ask that there should be no sex discrimination either against or in favour of women under the new constitution.

Will you be so good as to treat our covering letter as part of the official document submitted to you on behalf of our Organisations.

November 16th, 1931.

MEMORANDUM ON THE STATUS OF INDIAN WOMEN IN THE PROPOSED NEW CONSTITUTION OF INDIA.

The All-India Women's Conference, The Women's Indian Association and The Central Executive Committee of the National Council of Women in India welcome and endorse the Declaration of the fundamental rights of citizenship in India under the future constitution drawn up by the accredited leaders of the Nation, namely:—

> "Equal rights and obligations of all citizens, without any bar on account of sex.
>
> No disability to attach to any citizen by reason of his or her religion, caste, creed or sex in regard to public employment, office, power or honour and in the exercise of any trade or calling."

Object of the present Memorandum.

This Declaration of the fundamental rights of citizenship in India having been made, the recognition of women's equal citizenship in all matters relating to franchise, representation, or employment has become an accepted principle. The present Memorandum is, therefore, concerned only with the methods by which women may be enabled to exercise to the full their legitimate rights.

The women of India on the basis of their admitted and declared equality, demand that in actual practice no disqualifications or conditions shall be laid down which may hamper them in any way from the fullest exercise of the right of voting at public elections or offering themselves as candidates for seats on Legislative or Administrative institutions. Similarly, no impediments should be placed in their way in the matter of the holding of public office or employment which might, in effect, bar women from taking their full and equal share in civic rights and obligations.

Franchise.

Present Conditions and the Necessity for the Demand.

The experience of women under the existing constitution makes the foregoing demand imperative. In spite of equality in theory, they suffer in practice from a grave inequality owing to the right of voting being conditioned by property-holding or other similar qualification, ordinarily inaccessible to women in India. Though the resolution of the Indian National Congress declares for an immediate acceptance of the principle of adult suffrage, it may be argued nevertheless, that the first step towards the adoption of that principle might require, for its successful practice, the conditioning of the exercise of the right by some qualification of the type above mentioned. However, we cannot but point out that, though the theoretical equality of men and women citizens might conceivably be maintained under such a practice, the position of women will inevitably be rendered wholly unequal under the existing social systems, it being generally recognized that very few women hold or own property in their own name or right.

Again, even if the property qualification for voting or candidature is made nominal, women are likely to suffer as long as our social systems remain as they are.

As compared with men, very few women would have even nominal property in their own names and right, and since a very considerable proportion of the adult women of India is either married or widowed, the voting rights of all such would, on a property basis of any kind have to follow the corresponding rights of their husbands.

There is yet another difficulty to be considered in this connection. Even if the franchise system permits a wife or widow to enjoy the same voting rights as the husband, this position will not commend itself to the educated and thinking women of India, inasmuch as it makes the citizenship of woman contingent on her relationship—past or present—to a man, for a very large proportion of women. We are strongly of opinion *that the Elementary Rights of Women as human beings should not be based on an extraneous factor like Marriage.*

If a literacy test of any kind is introduced as a condition precedent for the exercise of civic rights, women will be placed at a still greater disadvantage, for the obvious reason that there are many more literate men than women.

Moreover, if as is likely and necessary, some age limit is fixed for the exercise of such rights, the handicap on women will be still further increased, for relatively speaking there are fewer literate women above the voting age than below it.

Therefore, the conditioning of the right of franchise, either by property or literacy qualifications, would be *fundamentally inconsistent with the Declaration of Rights above quoted.*

In these circumstances, the All-India Women's Conference, the Women's Indian Association and the Central Executive Committee of the National Council of Women in India, consider the immediate, unqualified and unconditional adoption of the principle of *Adult Franchise* to be the best and most acceptable mode of assuring and securing political equality between the men and women of this country. They unhesitatingly consider all conditions or qualifications or tests for the exercise of this right, whether based on property or literacy, to be needless impediments in the way of the enjoyment by women of civic equality.

Accordingly they recommend that:—

Every man or woman of the age of 21 should be entitled to vote and to offer himself or herself as a candidate at any election to an Administrative or Legislative Institution.

Representation.

We are confident that, if this practical equality is secured for women in the matter of Franchise, they will be able to find their way into the Legislative and Administrative Institutions of the country through the open door of ordinary election.

No special expedients for securing the presence of women on these bodies, such as reservation, nomination or co-option would then be necessary.

The Women of India have no desire to seek any specially favoured treatment for themselves, provided that their full and equal citizenship is recognized in practice as it is in theory.

Public Services and Employment.

It is but a corollary to this practical equality between men and women that women should be eligible, in the same way as men and on the same conditions, for all grades and branches of the Public Services, as they are entitled, under the Declaration of Rights, to equality in the exercise of all trades, professions and employment.

Disqualifications.

As distinguished from the qualifications, etc., for voting, in which the women of India demand an absolute and effective equality, the disqualifications for the exercise of civic rights should be based on purely personal grounds.

Thus, the fact of a woman's relationship to a man or the disqualification, if any, attaching to her male relative of any degree, should in no way prevent her from exercising to the full her legitimate rights.

August, 1931.

APPENDIX XV.

COMMUNAL REPRESENTATION.

Memorandum by Sir Provash Chunder Mitter.

As the Minorities Committee will meet soon, I think that as the sole Hindu representative from Bengal on that Committee, I ought to place the position with regard to Bengal before my fellow Delegates.

The claims on behalf of the different minorities have been put forward as follows:—

	Per cent.
In the first two cases I am ignoring decimals—	
Muslims	55
Backward Classes	25
European Communal	5
Indian-Christians	3
Anglo-Indians	2
Total	90

Since then I have seen it stated in the Press that Mahatma Gandhi offered 51 per cent., instead of 55 per cent., to the Muslims. The above claims do not take into account the claims for class seats. So far as I am aware the claims for class seats are:—

	Per cent.
British (at present they have 11 in a House with 114 elected members)	10
Labour (a number of seats, but I am not aware of the actual percentage claimed)	
Indian Trade and Commerce	5
Landlords	7½
Universities	2
Total	24½

It will appear from the above that if all these claims are admitted or accepted, the total is considerably over 100 per cent., and that the Hindus (other than the Backward Classes) whose population runs into many millions, will not have any seats from the general electorate.

This position, of course, is untenable, and a mere statement of facts will show what the position is.

Although I am the sole Hindu representative from Bengal on the Minorities Committee, no offer has yet been made to me, nor even was the question discussed either with me or with any of my Hindu fellow Delegates from Bengal who are not on this Committee, by the Muslim group. I was, however, told a few days ago by one of the Muslim representatives from Bengal that the Muslim delegation is of the opinion that the question should be settled on an All-India basis.

November 11th, 1931.

SUPPLEMENTARY MEMORANDUM BY SIR PROVASH CHUNDER MITTER.

With reference to the claim of the Muslims regarding a statutory majority of the whole House on the basis of communal electorates, I desire to put on record that before I left India I consulted Hindu-elected members of the Bengal Legislative Council, members of the Executive Committee of the

Indian Association (an important and old-established association founded by the late Sir Surendra Nath Banerjea and other leaders in 1875), and the Executive Committee of the British Indian Association (the oldest political association in Bengal, being established in 1851). I also consulted some prominent Congressmen with whom I could get into touch. I found that Hindu public opinion was strongly against acceptance of the claim of the Muslims for a statutory majority of the whole House.

I also consulted Hindu public opinion in Bengal as regards joint electorates with reservation of seats, and I found that, generally speaking, Hindu public opinion was strongly in favour of joint electorates with such reservation. I understand, however, that the Muslim Delegation, who are organised as a party on an all-India basis under the leadership of H. H. the Aga Khan, are not prepared to deviate from the claim for communal representation, so I refrain from placing the details of Bengal Hindu opinion regarding adjustment of the communal question on the basis of joint electorates with reservation of seats. I may mention in this connection that although I am the sole Hindu representative from Bengal on the Minorities Sub-Committee, I was never asked by the Muslim Delegation to discuss the Bengal communal question with them; I may add that I tried to convey the information that I was quite willing to discuss the matter.

I will next refer to the claims of the different minorities and class interests. These claims, as originally put forward, were as follows :—

	Per cent.
In both these cases I am ignoring decimals—	
Muslims	55
Backward Classes	25
European Communal	5
Indian-Christians	3
Anglo-Indians	2
Total	90

In the claims so put forward, the claims for class seats were not specifically discussed, but so far as I am aware the claims for class seats are :—

	Per cent.	
British (at present they have 11 in a House of 114 elected members, over and above 5 communal seats)	10	
Labour (a number of seats, but I am not aware of the actual percentage claimed)	—	
Indian Trade and Commerce	5	
Landlords	7½	
Universities	2	
	24½	(excluding Labour).

It will appear from the above that if all these claims are admitted or accepted the total is considerably over 100 per cent., and that the Hindus (other than the Backward Classes), whose population runs into many millions, will not have any seats from the general electorate. This position is, of course, untenable, and a mere statement of the facts will show what the position is.

Since these claims were put forward, a joint Note has been circulated over the signatures of H.H. The Aga Khan on behalf of the Muslims, Dr. Ambedkar on behalf of the Depressed Classes, Rao Bahadur Pannir Selvan on behalf of the Indian Christians, Sir Henry Gidney on behalf of the Anglo-Indians, and Sir Hubert Carr on behalf of the Europeans. The arrangement for division of seats put forward in this joint Note is totally unacceptable to the Hindus of Bengal. My personal opinion is, and I say this from my 37 years' experience of the public life of my Province, that if this scheme is accepted then the consequences will be disastrous. It will mean the increase of direct action, and more physical conflict between the two communities. I have stated my views on the point in a short speech before the Federal Structure Committee on November 18th, 1931. I do not, for the sake of peace which I value so much, desire to elaborate the reasons which induced me to come to the conclusion mentioned above. I may add that I do not belong to the Hindu Mahasabha movement, and I genuinely believe that adjustment of the Hindu-Muslim question on some workable basis is a *sine qua non* of political progress in India.

As the Hindus, Muslims and Sikhs have not been able to come to an agreed decision, we have to consider and advise His Majesty's Government as to what is to be done. I still adhere to the opinion I expressed in my short speech to the Federal Structure Committee on November 18th, that the best course will be to send out a small Commission to find out the facts. That Commission should have Indians associated with it, and may well consist of three British statesmen and two Indian judges, one a Muslim judge and the other a Hindu judge. The Indian representatives should not be political people, because every politician has his own views on the matter. As, however, an objection has been taken by an eminent Indian to associate judges with Commission, I am quite willing to accept a slight modification of my original suggestion, by putting forward a further suggestion that, instead of having judges actually holding office, we may have judges who have retired from office, but without intending any disrespect to the political men of India, I do insist that the inclusion of political men will go a long way to defeat the object I have in view. I have already explained in my speech that sending out a Commission of the nature indicated should not hold up the announcement, nor the drafting of the Act, nor any other relevant work in connection with constitutional advance.

I would conclude this Memorandum by suggesting certain general considerations of an important character, which should be taken into consideration in case His Majesty's Government are disinclined to send out a Commission of the nature indicated.

So far, four important schemes were before the public, namely, the Congress scheme, the Communal Muslim scheme, the Nationalist Muslim scheme and the Hindu Mahasabha scheme. The unfortunate part is that the Hindus do not agree to the Communal Muslim scheme, and the Muslims do not agree to accept any of the other three schemes. Further, on the Hindu side there is a difference of opinion with regard to the Congress scheme and the Hindu Mahasabha scheme. The net result is that the two communities have been unable to come to an agreed decision. Further, there is to my mind a common defect in all the four schemes, namely, that if any of these schemes are accepted it will mean that in some Provinces there will be a Hindu majority, in others a Muslim majority (perhaps on account of the disposition of the population this is inevitable), but no practical suggestion has been made in any of these schemes by which the minority in any Province —to whichever community that minority may belong—will be in a position

to effectually influence the members of the Legislature who may be returned on the votes of the majority community. For that reason I submit that some new method had better be explored. One such method which, in my opinion, may well be worth considering, although I realise that unless the two communities agree to explore the method for the sake of peace it will serve no useful purpose to press this method, is as follows :—

1. In constituencies where less than 10 per cent. of the total number of voters belong to the Hindu or the Muslim community, in the counting of votes each vote of the minority community will count as two, both with regard to the election of the Hindu or of the Muslim candidate.

2. In constituencies where 10 per cent. but not more than 30 per cent. of the total number of voters belong to the Hindu or the Muslim community, in the counting of votes the votes of the minority community will be increased by 50 per cent. (that is to say, each vote will count as 1½ votes) both with regard to the election of the Hindu or of the Muslim candidate.

Another suggestion that I venture to put forward is that this baffling problem will be easier of solution if, instead of attempting to solve it on an all-India basis, we try to solve it Province by Province. Not only will such a line be more consonant with realities, but we are likely to meet with less difficulty if we try to solve the problem Province by Province. In support of my suggestion regarding the settlement of the problem Province by Province, I would point out that the real difficulty to-day is about the Provinces. The difference between the two communities as regards the all-India Legislatures is neither so great nor so determined as that with regard to some of the Provinces.

Another objection that I have to the four schemes mentioned above is that as under those schemes in a number of Provinces one community will be in a majority, without the minority community being in a position to more effectually influence the members who are returned to the Legislature by the majority community, it is extremely likely that pressure will be brought to bear on Ministers who will depend on the support of the majority community. Such pressure may lead to the oppression of the minority community, or if not actual oppression, the minority community may work itself up to the belief that it is oppressed. If such a state of things arises in one Province where one particular community may be in a majority, it is extremely likely that we shall have the reaction of such a position in other Provinces where the other community is in a majority. If such a contingency arises, then the whole of India may be brought into the vortex of communal passion and communal conflict.

I therefore suggest that the best course will be to appoint a small Commission of the nature of the one I have indicated above. Such a Commission will not only be in a better position to ascertain materials which are lacking to-day, but they will also be in a better position to find out how the larger number of representatives who will be available in India will accept a particular kind of electoral arrangement. After all, none of us should forget that the question before us is not a question of the division of a purse or a property belonging to an individual, but the question before us is how the masses belonging to two great communities will agree to work the electoral arrangements in order to evolve a system of responsible government based on persuasion and discussion, and not on coercion or physical conflicts.

In conclusion, I would make a further suggestion, namely, that whatever decision may be arrived at, it should be on the basis of the seats reserved for general constituencies, and should not be on the basis of a percentage of the whole House. The Simon Commission, as well as the Government of India, proceeded on this basis. Many of the difficulties will be avoided if we give up the idea of a majority or a minority of the whole House. Further, what we are discussing really appertains to the general constituency seats

and not to special or class seats. In this connection there is another point which should be mentioned, namely, that seats for Europeans, Anglo-Indians and Indian-Christians, should, in every Province come from the majority community and not from the minority community. As regards other class seats like Labour, Landlords, Indian Trade and Commerce (but not British Trade and Commerce), the seats may well come from both the communities, although in point of fact at a particular stage of the development of a particular Province one community may have an advantage over the other. There is no reason, however, why—given the necessary self-help without which no real political progress is possible—such an advantage should be of more than a temporary nature.

20th November, 1931.

APPENDIX XVI.

THE COMMUNAL PROBLEM IN THE PUNJAB.

Memorandum by Sir Geoffrey Corbett
(circulated at the request of Mr. M. K. Gandhi).

The communal problem in the Punjab may be stated as follows:—

A. The Muslims, being a majority of the population, claim to have a majority in the Legislature. For this they consider separate electorates to be necessary, because their numerical majority is not sufficient to outweigh the greater wealth and influence of other communities, to which the Muslim ryots are stated to be heavily indebted.

B. The Sikhs would prefer joint electorates. But if the Muslims have separate electorates, the Sikhs claim—

(*a*) that Muslim representation by separate electorates must be less than 50 per cent. of the whole Legislature;

(*b*) that the Sikhs must also have separate electorates with substantial weightage, as claimed by Muslims in Provinces where they are a minority.

C. The Hindus desire joint electorates, but they are willing to accept any compromise which satisfies the following principles:—

(*a*) There must be no reservation of seats for a majority community which would give it a "statutory majority" in the Legislature;

(*b*) The reservation of seats for a minority community must not be less than its population basis, that is, weightage must not be conceded to other communities at the expense of a minority community.

2. It cannot be said that any one of these claims is unreasonable, or should properly be abandoned. The fact is that in the Punjab as now constituted the communities are so distributed that their legitimate claims are irreconcilable. There is no margin for allowances, and a solution becomes mathematically impossible. Further, a solution that is dependent on population percentages can have no finality, but must be subject to revision at each ensuing census. The problem has indeed been substantially affected even since the last Session of the Conference by the publication of the recent census figures.

3. If then a solution is practically impossible in the Punjab as now constituted, the logical remedy would be to re-adjust the boundaries of the Punjab. It would be unwise and unjustifiable to " jerrymander " provincial boundaries for communal purposes. There is, however, a demand for a general redistribution of Provinces. To quote Chapter IV of the Nehru Committee's Report, " the present distribution of Provinces in India has no rational basis. It is merely due to accident and the circumstances attending the growth of the British power in India ". The resultant Provinces, though possibly convenient for the purposes of British rule, are not necessarily suitable units for responsible self-government. Redistribution should be considered on the following grounds :—

(*a*) linguistic, ethnical and historical;

(*b*) economic, geographical and administrative.

I propose now to approach the Punjab problem from this point of view, without regard to communal considerations.

4. Historically the Ambala Division is part of Hindustan; its inclusion in the Province of the Punjab was an incident of British rule. Its language is Hindustani, not Punjabi; and its people are akin to the people of the adjoining Meerut and Agra Divisions of the United Provinces rather than to the people of the Punjab.

Economically, the most important factor in the life of an agricultural people is irrigation. It is administratively desirable that an irrigation system should be controlled by a single provincial Government. Otherwise there will inevitably be disputes about the distribution of water, involving perhaps a permanent inter-provincial Irrigation Commission or the intervention of the Federal Government. The Ambala Division is not irrigated from the Five Rivers, but from the Jumna system, on which the adjoining districts of the United Provinces also depend. But the Simla district and the north-west corner of the Ambala district, which are watered by the Sultej, and contain the head-works of the Sirhind canal, should remain in the Punjab.

5. It is fair to assume, therefore, that in any rational scheme for the redistribution of Provinces the Ambala Division, less the Simla district and the north-west corner of the Ambala district, would be separated from the Punjab. The unwieldy United Provinces might also be divided into a western Province of Agra, which would include the Ambala Division, and an eastern Province of Oudh; but this is a matter which is beyond the scope of this memorandum. It remains to be considered how such a reconstitution of the Punjab would affect the communal problem.

6. The population of the new Punjab would compare with the population of the existing Punjab as follows:—

(Figures in thousands.)

	As now constituted.		*Without Ambala Division (less Simla).*	
		Per cent.		Per cent.
Muslims	11,444	55·3	10,445	61·8
Hindus	6,579	31·8	3,997	23·6
Sikhs	2,294	11·1	2,137	12·6
Others	367	1·8	324	2·0
	20,685		16,903	

The figures of the 1921 census have been taken, because the district communal figures of the 1931 census are not yet available. The figures of the 1931 census for the Province as now constituted are as follows:—

	(Figures in thousands.)	Per cent.
Muslims	13,332	56·5
Hindus	6,728	28·6
Sikhs	3,064	13·0
Others	467	1·9
	23,581	

It follows that the total population of the new Punjab would be about 19 millions, and the percentages of Muslims and Sikhs would be somewhat higher than the 1921 percentages.

7. To what extent, then, would it be possible in the reconstituted Province to satisfy the claims of each community, as stated at the beginning of this memorandum?

A. The Muslims, being 62 per cent. of the total population, would be sure of a majority in the Legislature through territorial constituencies with joint electorates, without reservation of seats, provided that the qualifications for the franchise were so determined as to reflect their numerical strength in the electoral roll.

The Franchise sub-Committee and the scheme of the Congress Working Committee have already recommended that the franchise should reflect in the electoral roll the proportion in the population of every community.

The basis of territorial constituencies with joint electorates would naturally be the existing administrative districts. The western districts of the Punjab are predominantly Muslim and the eastern districts are predominantly Sikh and Hindu. Excluding Simla, which has a population of only 45,000, and may be grouped for electoral purposes with the adjoining hill district of Kangra, there are now 28 districts in the Punjab; and in 15, or 53 per cent., of them, the Muslims are more than 60 per cent. of the population. Without the Ambala Division, there would be 23 districts; and in 15, or 65 per cent., of them, the Muslims would be more than 60 per cent. of the population.

B. The Sikhs would have the joint electorates which they prefer, and through which they feel that they can best exercise their influence. They would no longer require separate electorates or weightage. Further their numerical strength would be relatively increased from 11·1 per cent. of the population in the province as now constituted to 12·6 per cent. according to the figures of 1921, and about 15 per cent. according to the figures of 1931.

C. The solution satisfies the two principles within which the Hindus are willing to compromise; *there* would be no "statutory majority" by reservation of seats, and no weightage at the expense of a minority community. The Hindu proportion of the population would be substantially diminished, but they would have the joint electorates which they desire, and through which, in their view, a minority community is best able to exercise its influence.

October 12th, 1931.

PUNJAB—1921 CENSUS.

(*Population in thousands.*)

Districts.	Hindus.	Per cent.	Muslims.	Per cent.	Sikhs.	Per cent.	Others (Mostly Christian).	Per cent.	Total.
Rawalpindi Division.	309	8·9	2,973	86·1	153	4·4	26	0·7	3,461
(1) Gujrat . .	63	7·7	710	86·3	49	5·9	2	—	824
(2) Shahpur . .	82	11·4	596	82·8	30	4·2	12	1·6	720
(3) Jhelum . .	35	7·3	423	88·7	19	4·0	—	—	477
(4) Rawalpindi .	57	10·0	470	82·6	32	5·6	10	1·8	569
(5) Attock . .	26	5·1	466	91·0	20	3·9	—	—	512
(6) Mianwali . .	46	12·8	309	86·4	3	0·8	—	—	358
Multan Division.	622	14·8	3,246	76·9	290	6·9	60	1·4	4,218
(7) Montgomery .	95	13·3	513	71·8	96	13·5	10	1·4	714
(8) Lyallpur . .	181	18·5	595	60·7	161	16·5	42	4·3	979
(9) Jhang . .	85	14·9	475	83·3	9	1·6	1	0·2	570
(10) Multan . .	134	15·1	732	82·2	18	2·0	6	0·7	890
(11) Muzaffargarh .	70	12·3	493	86·8	5	0·9	—	—	568
(12) Dera Ghaza Khan.	57	12·2	411	87·6	1	0·2	—	—	469
Biloch Trans-Frontier Tract.	—	—	27	—	—	—	—	—	27
Lahore Division.	1,124	22·4	2,849	57·1	813	16·3	211	4·2	4,997
(13) Lahore . .	256	22·6	648	57·4	180	15·9	47	4·1	1,131
(14) Amritsar . .	204	22·0	424	45·6	287	30·9	14	1·5	929
(15) Gurdaspur .	259	30·4	423	49·6	138	16·2	32	3·8	852
(16) Sialkot . .	218	23·2	581	62·0	75	8·0	64	6·8	938
(17) Gujranwala .	102	16·4	443	71·0	51	8·2	28	4·4	624
(18) Sheikhupura .	86	16·5	331	63·3	83	15·9	23	4·3	523
Jullundur Division (+ Simla).	1,942	45·9	1,377	32·7	881	20·8	27	0·6	4·227
(19) Kangra and Simla.	755	93·1	45	5·6	3	0·4	8	0·9	8·11
(20) Hoshiarpur .	500	54·0	289	31·2	133	14·3	5	0·5	927
(21) Jullundur .	245	29·8	367	44·6	206	25·0	5	0·6	823
(22) Ludiana . .	136	24·0	193	34·0	236	41·5	3	0·5	568
(23) Ferozepore .	306	27·9	483	44·0	303	27·6	6	0·5	1,098
Ambala Division. (lees Simla).	2,582	68·3	999	26·4	157	4·2	44	1·1	3,782
(4) Hissar . .	548	67·1	216	26·4	46	5·6	7	0·9	817
(5) Rehtak . .	630	81·6	125	16·2	1	0·1	16	2·1	772
(6) Gurgaon . .	460	67·5	217	31·8	1	0·1	4	0·6	682
(7) Karnal . .	573	69·1	236	28·5	12	1·4	8	1·0	829
(8) Ambala . .	370	54·2	206	30·2	98	14·4	8	1·2	682
unjab (Total) .	6,579	31·8	11,444	55·3	2,294	11·1	368	1·8	20,685

APPENDIX XVIA.

NOTE ON THE REDISTRIBUTION OF THE PUNJAB.

By Raja Narendra Nath.

Sir Geoffrey Corbett's scheme of the separation of Ambala Division from the Province as at present constituted, is unacceptable to me for the reason for which the Sikh scheme of partition is unacceptable to the Muslims. The Sikh scheme reduces the Muslim population from 56 per cent. at present to 44 per cent. in the new Province. Sir Geoffrey's scheme reduces the Hindu population from 29 per cent. to 23 per cent.

I have not been able to ascertain the views of the Hindus in various parts of the Punjab. I do not know what the Hindus of the Western Punjab may have to say to their being joined on to N.W.F.P. But if the new Province is formed as proposed by the Sikhs, reservation of seats for the Hindu minority on the basis of population will be absolutely necessary.

I find that Sir Geoffrey Corbett's scheme which appeared to have been received with delight by the Muslims here, is unacceptable to the Muslims of U.P. On the whole I think that partition of Punjab will afford no solution of the Communal problem. All partition schemes should in my opinion be shelved.

November 13th, 1931.

APPENDIX XVII.

A SCHEME OF REDISTRIBUTION OF THE PUNJAB.

Memorandum by Sardar Ujjal Singh.

According to 1921 census, the Punjab has a total population of 20,685,024. The Muslim and Sikh population in the five divisions into which Punjab is divided for administrative purposes is as follows:—

	Muslim.		*Sikh.*	
	Population.	Per cent.	Population.	Per cent.
Ambala Division . . .	1,006,000	26·3	158,000	4·2
Jullundur Division . .	1,370,000	32·8	886,000	21·0
Lahore Division . . .	2,849,000	57·0	813,000	16·2
Multan Division . . .	3,246,000	76·9	290,000	6·9
Rawalpindi Division . .	2,973,000	86·0	183,000	4·9

It is clear from the above table that Rawalpindi and Multan Divisions are overwhelmingly Muslim divisions. There are two districts, however, in Multan Division, namely, Lyallpur and Montgomery, which are colony districts. A considerable population of the central Punjab has settled down there. The Sikhs being good colonists have settled in fairly large numbers in those two districts, as they constitute 13·4 per cent. of the population in Montgomery district and 16·4 per cent. in Lyallpur District. The Muslim population in these two districts is 71 and 60 per cent. respectively. A great portion of the Muslim population in these two districts also has migrated from the Central Punjab.

A glance at the map of the Punjab and N.W.F.P. will clearly show that all the districts excepting Lyallpur and Montgomery, which are more centrally situated in the two divisions of Rawalpindi and Multan, run along the N.W.F. Province and Baluchistan. In some of these districts people speak language which is almost similar to the language of the adjoining Frontier district.

Dera Ghazi Khan district is inhabited by people who have common language, custom and religion with the population in Baluchistan. Campbellpur, Mianwali and Muzaffarghar districts have little if any difference from the people of the adjoining Frontier district of Dera Ismail Khan. Punjab Province as we find it to-day was never one Province consisting of all these districts prior to its annexation by the British. Some of these Western districts were conquered and brought under the then Lahore Government by Maharaja Ranjit Singh.

It is suggested therefore that the two Western divisions of Rawalpindi and Multan, minus the Lyallpur and Montgomery districts, be detached from the Punjab and amalgamated with N.W.F.P.

Such a redistribution of the Punjab will serve a double purpose. It will in the first instance give the Sikhs such a proportion of population as will provide for them a protection without claiming any weightage or reservation. The population of the Province after excluding these two Western divisions will be more evenly distributed among the three communities. The Mussalmans will be 43·3 per cent., Hindus 42·3 per cent., and Sikh 14·4 per cent. In such proportions parties on other than communal lines will find ample scope for development. The Sikhs in that case will claim no weightage nor any reservation of seats, and at the same time will not grudge any weightage to be given to Muslim minorities in other Provinces. Of course an equivalent weightage will be allowed to the Hindu and Sikh minorities in the N.W.F.P. and Sind, if separated.

It will be seen that in such a redistribution the Sikhs will not be gainers so far as the amount of their representation goes. The Muslims will still be the strongest individual group. But Sikhs do not want any gain or domination. What they want is that their representation should be such as to enable them to make an effective appeal to the other community if any one of these groups tries to tyrannise over them.

The second advantage of this redistribution would be that N.W.F.P. by the addition of ten districts with a population of 6 millions, will become a fairly large province, fully entitled to the status of a Governor's Province. The total population of this enlarged Frontier Province will be over 8 millions, with Muslims forming 87 per cent. of the population. It will be able to bear its burden of expenditure which provincial self-Government will necessitate and which the existing N.W.F.P. cannot possibly meet. If, however, the amalgamation with N.W.F.P. be not acceptable, these Western districts can form a separate Province.

All sections of the Sikh community are unanimously of the opinion that they will in no case agree to the domination of a single community in the Punjab, if it is not reconstituted on the above lines. Their population has risen from 11 to 13 per cent., which corresponds approximately to the Muslim population in U.P. Whereas the Muslims of U.P. are enjoying over 31 per cent. representation, the Sikhs have had to put up with an 18 per cent. representation on the Punjab Council. The Sikhs have been rightly claiming 30 per cent. representation. Their claim has been strengthened by the rise in their population. The Mussalmans should not in justice deny to the Sikhs the same rights which they are enjoying in their minority Provinces and are trying to strengthen further in India as a whole by other proposals.

The Sikhs have suggested an alternative and give the choice to the Muslim brethren. Either weightage to an extent of 30 per cent. with no single community in majority or the redistribution of the Punjab.

If neither of the two solutions is acceptable the Sikhs will not accept any constitutional advance in the Punjab. Let the rest of India go ahead and let the Punjab be administered by the Central Government. This is the considered opinion of the entire Sikh community whether Nationalists, Moderates or Loyalists.

These sentiments were expressed to Mahatma Gandhi in Delhi and were conveyed to the Viceroy in the address presented to His Excellency by the Sikhs in July last.

1921 CENSUS FIGURES

	Total Population.
Multan Division	4,218,360
Rawalpindi	3,460,710
Multan Division, minus Lyallpur and Montgomery	2,525,111
979,963 + 713,786 / 1,693,249	
	5,985,821

PUNJAB WHEN RECONSTITUTED.

	Total Population.	*Muslims.*	*Sikhs.*	*Hindus and Others.*
Ambala Division . . .	3,826,615	1,006,159	158,208	—
Jullundur Division . .	4,181,898	1,369,648	879,653	—
Lahore Division . . .	4,997,441	2,848,800	813,310	—
Lyallpur District . . .	979,463	594,917	160,821	—
Montgomery District .	713,786	513,055	95,520	—
	14,699,203	6,332,579	2,107,512	—
		43·3%	14·4%	42·3%

N.W.F. PROVINCE ENLARGED.

	Total *Population.*	*Muslims.*	*Sikhs.*	*Hindus. and Others.*
Existing N.W.F.P. . .	2,471,527	2,250,389	47,935	173,203
		Total	221,138	9%
Rawalpindi Division . .	3,460,710	2,973,371	152,956	334,383
Multan Division, minus Lyallpur and Montgomery Districts . .	2,525,111	2,138,371	33,639	353,101
Total .	8,457,348	7,362,131	234,530	860,687
		Total	1,095,217	13%

October 8th, 1931.

APPENDIX XVIII.

MEMORANDUM ON THE "PROVISION FOR THE SETTLEMENT OF THE COMMUNAL PROBLEM" (APPENDIX III).

By Dr. S. K. Datta.

This morning brought me a copy of the document entitled "Provision for a settlement of the communal problem put forward jointly by Muslims, Depressed Classes, Indian Christians, Anglo-Indians and Europeans." The signatories are five in number, and they assert that the proposals made by them may be taken as being acceptable to well over a hundred and fifteen millions of people. No claim to the support of a unanimity so wild in its scope has yet been made by any other group of persons at the Conference. As a member and a representative of one of the communities whose consent has apparently been given, I feel it incumbent upon me to make it clear why I am unable to support the provisions as a whole.

Certain of the matters on which an agreement has been arrived at would be acceptable to me, such as the provisions assuring religious liberty and the protection of Minorities against discrimination in the matter of civic rights. On such fundamental principles there can be no doubt of the support of the entire Christian community, but on the other highly controversal points brought forward, it is impossible to conceive of a unanimity of support. The Indian Christian community, which numbers nearly six millions, including those in the Indian States, is scattered throughout India, a substantial number being included in the population of the Madras Presidency. Now the vast majority of these Christians belong to the class of landless agricultural labour, and their kinsfolk are still included among the Depressed Classes of India whose interests have not been wholly overlooked at this Conference. From personal knowledge I would assert that the majority of them, because of poverty and the comparatively high franchise qualifications have little or no knowledge of the electorate and are incapable of judging the merits of communal and general electorates. Thus in the Madras Presidency, out of 1,726,000 Indian Christians, a number of 26,000 only are included on the voters' roll to-day. My duty as I see it is to accept only such proposals as I conceive to be in the best interests of all.

This document has been signed by what are termed Minorities, but it is not yet clear upon what the Minority grouping is based. It would seem to be accepted that the basis of a community is the profession of a particular religion. If this were true then it would follow that Indian Christians, Europeans and Anglo-Indians should be classed together as one community, but any attempt to unite them would immediately be resented. This would seem to indicate a second possible basis for a community, namely, race, since the Christian community is to be sub-divided again on the basis of race, each sub-division demanding special, if not specific, protection. The Depressed Classes have their own basis of classification; they profess the Hindu religion but assert that they are the victims of its social tyranny. Hence, while professing the same religion, they ask for protection against the majority of their co-religionists. As the result of these demands the fragmentation of India is proceeding apace.

But if we accept the present grouping of the Minority communities, the Memorandum has yet failed to consider fully the fundamental problem of what the minorities really desire to protect, and of how they may best protect these interests. If the signatories and their supporters had discussed these matters more fundamentally it might possibly have been shown that the interests it was desired to protect might best have been protected not by the separate electorate but by some other method. In the matter of electorates alone it might be considered whether if the minorities, say in the Madras Presidency, desired to protect themselves against Hindu domination they would not have better results by combining themselves into an electorate consisting of Muslims, Christians, Europeans, Anglo-Indians and Depressed

Classes. You would then have in the Legislature a bloc of members who could effectively deal with the Hindu majority. In the Punjab it might be otherwise, where Hindus, Sikhs, Christians and Europeans, as well as Depressed Classes, might be elected from a common register, thus effectively creating an opposition to the Muslim majority. Apart from the question of electorates, too, is it not possible that the best interests of the Depressed Classes might be best served by statutory provision making liberal financial grants for education purposes, administered by a trust incorporated by legislative measure?

At the time of the Morley-Minto Reforms special electorates were created for certain groups of Muslims. They were small in number and limited in scope. Under the Government of India Act of 1919 the special electorate was extended to the Muslims and to certain other communities, Anglo-Indians, Europeans, Indian Christians and Sikhs. The scope with regard to the Indian Christians was limited to the Madras Presidency. Under the aegis of the Muslim community it is now proposed to extend the application of the principle over a wider area, and to increase the number of candidates elected by this method.

Some of my colleagues, including one of the signatories of this document, have made it evident that they hope this regime of communal electorates is only transitory, but necessary to ensure the peace in which the great constitutional changes which are envisaged, will be carried out. I do not share their optimism. It will be remembered that the religious social law in India received by a curious mischance the support of British courts both in India and without. Thus the present religious law has been defined and given a conservative mould by the decisions of the Privy Council. It is altogether a baseless fear which conceives of the possibility of the Indian constitution stereotyping for many generations to come the conception of the communities as against the idea of the people of India as a whole?

One of the most serious failures of the Memorandum is its failure to provide for some internal means whereby, by a process of evolution, the communal idea will gradually pass away, and in its place the conception of the community as a whole will emerge. The method for the relinquishment of the communal electorates which the Memorandum proposes will, I believe, prove ineffective. The present constitution provides for the representation of economic interests. Why cannot this principle be extended? Let Labour constituencies be formed on a non-communal basis and extended to the rural areas and agricultural labour.

The weightage assigned to themselves by these communities in the Memorandum are in some cases fantastic, and it cannot but strike the impartial observer that these devices are specifically designed to frustrate the will of certain other communities. As a result of these weightages the construction of the legislature on the basis of fairness to all communities becomes an impossibility.

In considering these grave objections to the Memorandum I recall the words of Sir Henry Gidney this morning, when he asserted that I had given my consent to these negotiations. I may say that Sir Henry has completely misapprehended my conversations with him and my contributions to the proceedings of the informal Minorities Committee held in October. What I did say was that the main problem demanded a settlement of the Hindu-Muslim question and that the smaller Minorities and the real Minorities like the Christians, Europeans and Anglo-Indians could only come in after that main question had been settled. Now what does this Memorandum reveal? Simply this, that the smaller communities have united with the substantial community of the Muslims in order to make the position of the majority communities difficult. It would be disastrous for the Christian community if it were to throw its support on the side of one or other of the great contending parties of India.

If it is true that the Christian community needs protection against the Hindu majority in Madras, it is equally true that it will need it against the Muslim majority in Bengal and the Punjab. I had hoped that as far as my

community was concerned it would need neither, but that a common Hindu-Muslim agreement would emerge in which the real minorities would find a place. The circumstances under which this agreement has been drawn up will undoubtedly be interpreted as an attempt to impose on the Hindus a regime to which their consent has not been obtained. In such coercion I trust that the community which I represent will have no share.

In conclusion, I may add that on lines such as are proposed in this Memorandum I see little chance of an agreed solution, but what is even more important, I am unconvinced that on this system of legislative representation which might have had a place as long as the executive was irresponsible can be built a government which feels itself responsible to all. The views expressed in this letter are shared by a substantial number of Indian Christians in India.

November 14th, 1931.

APPENDIX XIX.

NOTE ON APPENDIX IV.

By Maulvi Muhammad Shafi Daoodi.

In this note I only deal with the following passage appearing in the "Memorandum on the Sikhs and the new constitution for India" circulated to the Conference by Sardars Ujjal Singh and Sampuran Singh on the 12th November. The Sardars say:—

> "In view of the claim of the President of the last All-India Muslim Conference, we believe that to write the garrison Province of India into the constitution as an unalterably Muslim Province would be to make the dismemberment of India inevitable. That claim, it will be remembered, was that there should be a 'consolidated North-West State, within or without the British Empire,' consisting of the Punjab, North-West Frontier Province, Baluchistan and Sind."

The President of the last All-India Muslim League (*not All-India Muslim Conference as incorrectly stated above*) was Dr. Sir Muhammad Iqbal who wrote as follows in the "Times" of 12th October, 1931, with reference to his words as cited in the above quotation:—

> "May I tell . . . . . that in this passage I do not put forward a 'demand' for a Muslim State outside the British Empire, but only a guess at the possible outcome in the dim future of the mighty forces now shaping the destiny of the Indian subcontinent. No Indian Muslim with any pretence to sanity contemplates a Muslim State or series of States in North-West India *outside* the British Commonwealth of Nations as a plan of practical politics.
>
> "Although I would oppose the creation of another cockpit of communal strife in the Central Punjab, as suggested by some enthusiasts, I am all for a redistribution of India into Provinces with effective majorities of one community or another on lines advocated both by the Nehru and the Simon Reports. Indeed, my suggestion regarding Muslim Provinces merely carries forward this idea."

Dr. Iqbal concludes his letter with a pithy statement of the Muslim position and says—

> "A series of contented and well-organised Muslim Provinces on the North-West Frontier of India would be the bulwark of India and of the British Empire against the hungry generations of the Asiatic highlands."

As regards the rest of the claims advanced by the Sardars, I shall have occasion to say something later.

November 14th, 1931.

APPENDIX XX.

MEMORANDUM ON APPENDIX III.

By Raja Narendra Nath.

The pact between certain minorities, from which the Hindu minorities of the Punjab and Bengal have been excluded, and which was placed before the Minorities Committee on the 13th November, was received by me late on the previous night. I had no time to consider it before I went to the Minorities Committee.

In connection with it, and as a criticism of the proposals made therein, I send this note, which I hope will receive careful consideration and will be placed side by side with the so-called compromise.

I invite attention to Appendix " A " attached to the pact, of which it forms an essential part. Hindus are presumed to be a majority community in the Federal Legislature, and in six out of nine Provincial Legislatures; but the presumption does not stand when it is sought to separate the Depressed Classes from the Hindus. The figures in the Appendix will show that the Hindus are reduced to a minority in almost all Legislatures, whilst not only the weightage of Muslims is maintained, but they are given absolute majority in the Punjab and Bengal.

The problem of the Depressed Classes is not rightly understood by British politicians. Even out of those who have been to India, few have had opportunities of thoroughly examining the question. In the first place, conditions in Northern India are quite different from those in Madras and parts of Bombay. In Northern India itself, conditions vary in different Provinces. There are, however, certain general principles applicable to all. The twofold division of the Hindu population, into depressed classes and caste Hindus, is not correct. The so-called " Depressed Classes " are themselves divided into castes. Each is as strictly endogamous as the higher caste of Hindus. There is a very large section amongst them which is regarded as untouchable by all. If caste Hindus cannot represent the Depressed Classes, owing to their being untouchable, how can a member of the Depressed Classes, belonging to a certain caste and regarding others as untouchable, be representative of all Depressed Classes? Separate representation will be carried to absurd lengths if small differences justify separate electorates. Corporate civic life, already difficult under the separatist policy followed so far, will become impossible.

Untouchability is due to educational and economical backwardness, and the nature of the occupations which these classes follow. Those among them who take to the liberal professions or are appointed to Government posts, cease to be regarded as untouchable. I understand that gentlemen belonging to the Depressed Classes whose clan was regarded as untouchable, rose to the position of judges of the High Courts and sat on the same Bench with the most orthodox Brahmin Judges. All " Depressed Classes " will in course of time, and by utilising opportunities for education, cease to be regarded as depressed or backward. Their separation or isolation from the Hindus is not a course which ought to be followed, in their own interest. All that is needed is that the future constitution should provide that on account of caste and creed none should be prejudiced in the acquisition and enjoyment of civic rights and the right to public employment.

The difficulty of giving a definition of the Depressed Classes which shall apply to all Provinces has been adverted to in paragraph 58 of Volume I of the Report of the Statutory Commission. In the Punjab, as pointed out in the memorandum submitted by me, the process of reclamation is going on very rapidly. Islam and Sikhism are not the only proselytising religions. The Arya Samaj, which is a Hindu body, also falls into that category. This reformed religious society conducts several educational institutions for the education of the Depressed Classes, who are brought up in the tenets of the Arya Samaj. According to this advanced body of religious reform, all who

come within its fold are entitled to wear the Brahminical thread and to recite the Gayatri. Members of the Depressed Classes who embrace the religion of the Arya Samaj are given this privilege. It is therefore not right to assume that these men would like to be dissociated from the Hindus, and would insist upon special representation and separate electorates. In this connection the remarks made in paragraph 79 of Volume II of the Report of the Commission are pertinent, and I cannot help reproducing them *in extenso*:—

> "Our object therefore, is to make a beginning which will bring the depressed classes within the circle of elected representation. How is this to be done? Most of the depressed class associations which appeared before us favoured separate electorates, with seats allocated on the basis of population, though one or two still wished to retain nomination. Separate electorates would no doubt be the safest method of securing the return of an adequate number of persons who enjoy the confidence of the depressed classes, but we are averse from stereotyping the differences between the depressed classes and the remainder of the Hindus by such a step, which we consider would introduce a new and serious bar to their ultimate political amalgamation with others. Such a course would be all the more difficult to justify in those provinces where the breaking down of barriers has advanced furthest. If separate electorates have to be secured them, that is no reason for bringing other cases within this mode of treatment, if it can be avoided. A separate electorate for depressed classes means, as a preliminary, a precise definition of all who are covered by the term, and the boundary would be in some cases difficult to draw. It means stigmatising each individual voter in the list, and militates against the process which is already beginning, and which needs to be in every way encouraged—that of helping those who are depressed to rise in the social and economic scale."

The representation of these classes, even if seats are specially reserved for them, will depend on what the franchise is going to be, and how many of them will come on the electoral roll. In the Punjab, as perhaps in some other Provinces, it may be impossible to frame a constituency on the franchise fixed, and to introduce any system of separate electorates for the Depressed Classes. (Please see the recommendations of various local governments on this point and the remarks of the Government of India in paragraph 35 of their Despatch.)

In Bengal there are tracts in which there is a compact population of the Depressed Classes, and they secure election without separate electorates. In the Bengal Council more than ten members out of the forty-six Hindus returned from general constituencies belong to the Depressed Classes.

On the scale of representation recommended in Appendix "A," the proportion of caste Hindus in the Punjab and Bengal is reduced to 14 and 18 per cent. respectively. There would be a very strong case for weightage to the Hindus of these Provinces if the scale recommended was to receive serious consideration. The Hindus of these two Provinces would in that case claim weightage at the highest rate allowed to the Muslims in Provinces in which they are in a minority.

ANNEXURE 1.

Territorial Redistribution of Provincial Areas in India.

By Diwan Bahadur M. Ramachandra Rao.

I desire to invite the attention of the Members of the Conference to a matter of fundamental importance to which the Report of the Federal Structure Committee does not make any reference, namely, the need for making provision in the new constitution for the redistribution of provincial areas in which British India where such redistribution becomes necessary. Under the Government of India Act, 1919, this power is vested in the Governor-General in Council. Section 52A lays down that " the Governor-General in Council may, after obtaining an expression of opinion from the Local Government and the Local Legislature affected, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new Governor's Province, or place part of a Governor's Province under the administration of a Deputy-Governor to be appointed by the Governor-General . . . ." The Report of the Federal Structure Committee does not make any specific reference to this matter and it is a matter for consideration whether provision should not be made under the new constitution for vesting this power in the Governor-General, acting with his Ministers. So long as India has a unitary constitution, the final decision in a matter of this kind is very properly left in the hands of the Governor-General in Council acting under the directions of the Secretary of State in Council. What should be the position in respect of this matter when a Federal Government and a Federal Legislature comes into existence? I venture to think that suitable provisions will have to be thought out and incorporated in the Statute on the subject.

2. It is true that, in making a start with the Federal Constitution, we can only proceed on the basis that the boundaries of the British Provinces are what they at present are, but it has to be fully borne in mind that the demand for a redistribution of areas and readjustment of boundaries of the Provinces in India is a very real one, and is likely to arise for solution almost immediately after the new constitution is set up. Many administrators in India have felt in the past that the existing provincial boundaries " embrace areas and peoples of no natural affinity and sometimes separate those who might be more naturally united." Sir Thomas Holderness observes that " with the exception of Burma, no Province represents a natural unit; that is to say, that the Provinces do not stand for differences of race, language or geographical distribution. They are purely administrative divisions of territory." Sir Bamfyld Fuller wrote that " It would have been well for the country had its divisions into Provinces for purposes of government followed the lines marked by race and language so as to reinforce the sympathy which arises by similarity, by feelings of pride in the local government. The existing administrative divisions are heterogeneous as to have a directly contrary effect." Apart from the opinions of administrators, popular sentiment in recent years is in favour of such redistribution. The authors of the Nehru Report discussed the whole subject of linguistic Provinces in considerable detail, and important political organisations in India have passed resolutions favouring the redistribution of Provinces on linguistic lines. Attention is invited to my memorandum presented to the Joint Parliamentary Committee in 1919 (*vide* pages 109 to 115 of the Report of the Joint Select Committee on the Government of India Bill, Vol. III) and to the series of memoranda presented to the Indian Statutory Commission by the Government of India containing the history of the agitation for an Oriya Province, an Andhra Province, a Karnataka Province and a Tamil Province (*vide* pages 509 and the following pages of Vol. IV, Simon Commission Report). The Simon Commission referred to this matter at some length and expressed the opinion that " as the time is coming when each Province will have its own provincial government and its provincial resources it is extremely

important that the adjustment of provincial boundaries and the creation of proper provincial areas should take place before the new process has gone too far. Once the mould has set, any mal-administration will be still more difficult to correct." They therefore recommended the constitution of a Boundaries Commission and regard the appointment of such a Commission as a matter of urgent importance (page 26, Vol. II, of the Report of the Indian Statutory Commission).

3. Some proposals for redistribution of provincial areas were brought forward at the First Session of the Conference. The Rajah of Parlakimedi advocated the constitution of an Oriya Province. The separation of Sind was agreed to in principle, and the constitution of the Orissa and contiguous Oriya speaking tracts into a separate Province is now under examination. During the present Session memoranda urging the formation of an Andhra Province have been circulated by the Rajah of Bobbili and Mr. V. V. Giri. Mr. B. Shiva Rao has urged in another memorandum the formation of a Karnataka Province. Khan Bahadur Hafiz Hidayat Husain has urged the separation of Agra from Oudh. Sir Geoffrey Corbett has put forward a proposal for the separation of the Ambala Division from the Punjab and Sardar Ujjal Singh has put forward another scheme for the purpose of separating another area from the Province.

4. In these circumstances there can be no doubt whatever that the question of redistribution of provincial areas will become a matter of great importance with which the Federal Government and the Federal Legislature under the new constitution will have to deal. I think, therefore, the legal and constitutional position in regard to this matter will have to be examined carefully, and the necessary provisions have to be enacted. The existing British Provinces will, on the establishment of the new constitution, become Units in an all-India Federation, and the question as to the method and manner in which any of the federating Units of British India should be redistributed, and as to how new Provinces should be created and admitted into the Federation, requires very careful consideration. A redistribution must necessarily affect the legislative and executive organs of government of all the provincial areas involved in the redistribution, and many questions are likely to arise in which the Central Government may have to be the final deciding authority in the matter. My point is that while the redistribution will only be based on the largest measure of general agreement on the changes proposed both on the side of the area that is gaining and on the side of the area that is losing territory, the Constitutional Authority for giving legal sanction to such redistribution, and the conditions under which such a redistribution can be accomplished, have to be clearly laid down.

5. The subject of the redistribution of Provinces in British India is a matter in which British India alone is interested, and the Indian States coming into the Federation will have nothing to do with it. If any matter of territorial redistribution has to be dealt with by the Federal Legislature, the representatives of the Indian States will have no voice in the discussion of the subject. In the list of Central Subjects appended to the Second Report of the Federal Structure sub-Committee, it is stated that "Territorial changes—other than interprovincial and declaration of laws in connection therewith," should be classified as a Central Subject, (*vide* page 216 of Vol. I of the Proceedings of the Round Table Conference). Attention is, however, invited to the remark opposite this item, that "it (territorial changes) has already been decided to be a matter to be dealt with under amendments to the constitution." If territorial changes involving the redistribution of British Indian Provinces can only be effected by a process of amending the constitution, this method is likely to cause inordinate delays and would make it too difficult to have essential territorial changes in the boundaries of Provinces which have been urged for many years. I feel, therefore, strongly that a more flexible method should be devised. Perhaps the best way of providing for it would be by discussion of the subject in the Legislatures of the Provinces affected by the territorial redistribution and also in the Federal Legislature, and after such discussion the Governor-General acting with the advice of his Ministers should be empowered to take steps for such

redistribution. The necessary provisions will have to be incorporated in the Bill. Any redistribution of territory and the creation of new Provinces will necessarily involve the revision of the strength of the Legislatures concerned and the establishment of new Provincial Legislatures and wide powers to effectually carry out schemes of redistribution will have to be conferred on the co-ordinating authority, namely, the Government of India.

November 23rd, 1931.

ANNEXURE 2.

MEMORANDUM REGARDING THE FORMATION OF A SEPARATE ANDHRA PROVINCE IN SOUTHERN INDIA.

By the Raja of Bobbili.

In recent years there has been a persistent demand in India for the creation of new Provinces for the purpose of guaranteeing really cohesive and intelligent units of administration. Thus, the people of Sindh have been urging for separation from the Presidency of Bombay, and the creation of a distinct separate unit which could be formed into a new Sindh Province; likewise, the Canarese people living in the southern districts of the Bombay Presidency, western districts of the Madras Presidency, and on the borders of the Mysore State, have been demanding their rights to be grouped together into a separate Karnatic Province; and the Oriyas living in the three distant Presidencies of Bihar and Orissa, Bengal, Madras, and the Central Provinces have also been demanding the creation of a new Oriya Province for themselves; and this demand was conceded at the first Round Table Conference, and the Government of India have already taken steps by appointing an Orissa Committee last month. But perhaps more insistent than the demands of any of these groups has been that of the Telugu-speaking people now living in the twelve districts of the Madras Presidency for the creation of a separate Andhra Province.

(Andhra is an alternative name for Telugu. And it may be of interest to remember that the present Andhra districts in the Madras Presidency bear out a very interesting historical story. Thus, the four Andhra coast districts commonly known as the Northern Circars, were acquired by grant from the Emperor of Delhi in 1765; then in 1792, after the Mysore wars, and in 1799, after the abdication of the Raja of Tanjore, new territory was acquired and this forms the southern apex of the present Andhra area; and in 1800, the Nizam of Hyderabad ceded a good bit of territory, which now forms the ceded districts in the Madras Presidency.)

This claim has been based on the existence of these twelve contiguous districts where the same language is spoken, the same culture predominates, and where common historical traditions bind the people together.

Moreover, the area where the Andhras are spread over is easily 85,481 square miles; and the Andhra population, according to last census report, is 17,253,361. These two facts alone have been regarded as weighty enough, even from the standpoint of administrative convenience, for the creation of a new Province. But to these must be added the fact that the income from land revenue derived from the Andhra district is nearly half of the total revenues of the Madras Presidency. On these grounds alone the claim for a separate Province for the Andhras is thoroughly justified.

But the contention on behalf of the formation of a new Andhra Province is based on other arguments too. It is, in the first place, essential to remember that in the present Madras Presidency the bulk of the population, barring the Malayalis and the Kanarese, is made up of roughly half Tamilians and half Andhras. These two peoples have the most marked differences of culture and traditions. And the Andhras have all along felt that they cannot develop and emphasise the special qualities of their culture except by being a separate political and administrative unit. Such development of the Andhra culture could only be possible by education being imparted

through the medium of the Telugu language and also by public business being conducted in that language.

That the force behind the above contention has made itself felt even by the Government is illustrated by the creation of the Andhra University. And the present occasion is the best opportunity to satisfy the legitimate aspirations of the Andhras for their own separate Province.

Apart from these reasons, the Andhra people have all along felt that unless a separate Province is created for them, their interests would never be really looked after. Thus Madras, the capital city, being located in the Tamil area, the Andhras feel that their representation in Services is far below the population ratio. Moreover, the Andhras being very poorly represented in the higher Services, there is a strong feeling that the Andhra districts are being neglected regarding new irrigation and hydro-electric schemes. By way of illustration it could be pointed out that for the last thirty or forty years no large irrigation scheme has been taken up in the Andhra districts, while the Madras Government has been lavishly spending large sums of money on Mettur and Pykara schemes, which benefit only the Tamil districts. But a project like the Kistna-Tungabhadra, for which the ceded districts have been clamouring for the last twenty years, is neglected by the Government. Again, it must be remembered that the finances of the Madras Government, owing to the Mettur and Pykara schemes, have been mortgaged for years, and until those schemes are completed no money will be available for the Government for undertaking any new work in the Andhra districts. The Labour and Industries Department, to mention only a few departments, have so far been concentrating their attention and their activities only in the Tamil area. In short, the Andhras strongly feel that the revenues which are being realised from the Andhra districts are not being spent for the benefit and betterment of the Andhras.

Even as regards the cost of forming a new Province, it can be pointed out that financially such a proposition need not be prohibitive. For instance, in a large number of departments the officers at the head may be, without difficulty, rearranged into officers of two Provinces. As an illustration, the High Court may be split up into two halves; the Director of Public Instruction and his two deputies may be replaced by two Directors for the two Provinces; and likewise other Services can easily be split up without entailing any additional expenditure.

Another important factor in connection with the demand for an Andhra Province is that such a demand is not quite an accidental or recent one. Indeed, since 1913, when the Andhra Conference was held in Guntur district, the demand for a separate Andhra Province has been urged at various unofficial political gatherings. And on the 14th March, 1927, the Madras Legislative Council passed a resolution in favour of the formation of the contiguous Telugu-speaking areas of the Presidency into a separate Andhra Province. Again, on the 19th March, 1928, the Madras Council, on a token cut during the budget debate, expressed itself in favour of a separate Andhra Province.

Besides, it was quite significant that in the debate initiated by a member of the Council of State on the 16th February, 1927, the Home Secretary of the Government of India took pains to clearly emphasise that the Government of India were in no sense hostile to the underlying principle of the establishment of Provinces on a linguistic basis, and that in such matters the policy of the Government was that it should not act in advance of, or in opposition to, public opinion. Of course, it is needless to remind anyone that the demand for a separate Andhra Province is in no sense "in advance of or in opposition to public opinion." Indeed, the weight behind the facts that have been narrated above compelled the Simon Commission to observe "The demand for the formation of an Andhra or Telugu Province which was put forward 17 years ago at a Conference of Telugu-speaking districts has been persistent for many years, and has now become an important political issue. It has on two occasions during the recent years become the subject of a formal debate in the Madras Legislature, which has, by fairly large

majorities, endorsed the proposal for the constitution of a separate Andhra Province."

These factors must be weighty enough to convince anyone that the entire public opinion in the northern half of the Madras Presidency strongly supports the creation, and that too at the earliest, of a separate Province for the Andhras.

I have now only to hope that my colleagues on this Conference will carefully consider the claims of the Andhras for being grouped into a new Province, and after being convinced of those claims, give those of us who, like myself, have been working for its creation, their entire sympathy and support. I would also wish to take this opportunity of requesting the British Government to review the entire question, and do the best by the people who are demanding what is only their mere right.

In asking this I do not for a moment suggest that the time of this Conference should be spent on working out the entire details of the scheme for an Andhra Province. Indeed, I have no desire either to side-track the work of the Conference or in any way unnecessarily delay its proceedings. If the Conference discusses this question and accepts the principle of separation for the Andhras, then the Government of India could take their own time for working out the necessary details which need not, in any way, trouble my colleagues on this Conference.

ANNEXURE 3.

MEMORANDUM REGARDING THE FORMATION OF A SEPARATE ANDHRA PROVINCE IN INDIA.

By Mr. V. V. Giri.

1. The subject of a separate Province for the Andhras has long been before the public and the Government. The principle for the formation of such a Province has been recognised by eminent statesmen. His Majesty the King-Emperor approved of it on the ground that it would be the greatest bond of union for a component race. Viceroys of India such as the late Lord Curzon and Lord Hardinge and administrators like Sir Bamfyld Fuller were in favour of it. The Government of India was not hostile to the underlying principle.

2. That there has been a strong popular demand for the formation of a separate Province is abundantly clear from the following facts. The agitation for a separate Province was begun about twenty years ago by the Andhra Mahasabha—the mouthpiece of the Andhras in India. Their claims for a Province were placed before the Viceroy and the Secretary of State in the year 1917. The subject was mentioned in a debate in the old Imperial Legislative Council in February, 1918, in connection with a resolution moved by Sir (then Mr.) B. N. Sarma, recommending the redistribution of Provinces on a linguistic basis. A deputation waited on Lord Chelmsford and Mr. Montagu—the then Viceroy and Secretary of State for India in Council—about this matter. The subject was again brought forward before the Joint Parliamentary Committee (*vide* the memorandum presented by Diwan Bahadur Mr. M. Ramachandra Rao and published in a Blue Book). Andhra Conferences, held every year since 1913 and attended by large numbers of Andhras, passed resolutions urging the necessity for formation of an Andhra Province. The Indian National Congress passed resolutions approving of the principle and advocating division of Provinces on linguistic basis. In 1928 the Nehru Report recommended the formation of a separate Province for the Andhras.

3. Coming now to the Legislatures in the year 1922, a resolution was moved by Mr. J. Ramayya Puntulu in the Legislative Assembly urging the need for a separate Province and again in September, 1927, Mr. V. V. Jogiah, a member of the Assembly, gave notice to move a resolution on the

same subject but had to withdraw the same as it was considered undesirable to bring it forward in view of the controversy about the formation of separate Province for Sind regarding which there were given conflicting notices of Amendments. In February, 1927, the Legislative Assembly approved of the principle in connection with a resolution moved by Pandit Nilakantadoss for the formation of a separate Province for the Oriyas. Again, in the same month of the same year Honourable (now Mr.) V. Ramadoss Puntulu moved a resolution in the Council of State on this subject and another member of the Council of State, Mr. G. Narayenaswami Chetty, gave notice of a similar resolution this year.

4. In reply to this claim made by the representatives of the people from time to time, the Government of India, while accepting the underlying principle for the re-distribution of Provinces on linguistic basis, stated as follows in para. 8, pages 513 and 514, Vol. IV of the memoranda submitted to the Indian Statutory Commission by the Government of India:—

> " . . . the Government of India were in no sense hostile to the underlying principle of the establishment of Provinces on a linguistic basis, but their view was that any proposal of that kind required very careful examination; in fact, their attitude was one of neutrality. While the principle itself was attractive, there were certain obvious limitations on its practical application, and the first condition in dealing with proposals of this kind was that the Government should not act in advance of or in opposition to public opinion. For that reason the Government of India had laid down very clearly that before they can consider any such proposal, they must be satisfied that there is a real popular demand and that if that popular demand exists they may expect to find it voiced in the local Legislative Council. This condition has not been fulfilled in the case of the resolution before the House . . . The Home Secretary suggested to the mover that if he wished his proposal to be considered his best course was first to obtain what he had not yet established, that is to say, unequivocal local support. When that has been done, he would be in a position to approach the body which alone could give a decision in the matter, and that was the Statutory Commission."

Since this expression of opinion on behalf of the Government of India a resolution was moved on the 14th March, 1927, in the Madras Legislative Council by Mr. Anjaneyulu and was carried; and subsequently again on the 19th March, 1928, the question was raised by means of a token cut in the discussion on the Budget Estimates for 1928-29 and the formation of a separate Andhra Province was accepted by the Council.

Thus, the limitation on the practical application of the principle foreshadowed by the Government of India has since been satisfied.

5. Further, the formation of a separate Province is in consonance with the ideal of Provincial autonomy, as set forth in the Despatch of the Government and generally approved of by the Administrations in India and Great Britain, and of the proposed constitution for a Federal Government for India. The first Round Table Conference has given effect to the principle by approving of the formation of separate Provinces for Oriyas and Sindhis. The Report of the Simon Commission under the head " Need for Provincial Redistribution " in para. 38, pages 24 and 25 of Vol. II, of its Report has given certain tests for claiming readjustment of boundaries and redistribution of areas. It may be stated, in this connection, that there is no area in India which satisfies these tests better than Andhra. It may be asserted, without fear of contradiction, that viewed from any standpoint, the claims of the Andhras for a separate Province are unquestionable. If an Andhra Province be formed, it will have 11 contiguous districts inhabited by people speaking the same language forming a compact and self-contained area of over 85,000 square miles with a population of over 17 millions and paying a land revenue of thirty and half millions or 3½ crores of rupees. The income of the Province is as shown in the debate on the subject of the formation of an Andhra Province in the Legislative Council, Madras above said will be sufficient to

support the existence of a separate Province. There are in the Andhra part of the Madras Presidency large irrigational projects and centres of commercial business and also a separate University, a harbour and a Medical College, and other Arts Colleges. Among others the only other important institutions it requires for the formation of a Province is a High Court of Judicature and a Governor in Council and a Board of Revenue with a capital in some important centre. As shown by the mover of the resolution in the Madras Legislative Council in his speech the income of the Province will be sufficient to meet this expenditure and the creation of a Province will create facilities for increased revenue. A statement of the land revenue and population of a few Provinces already formed and those in contemplation are given hereunder comparing the same with those of the Andhra Province if formed.

REVENUE.

Provinces.	*Income.*
(*a*) Bihar and Orissa . .	One crore and 55 lakhs of rupees.
(*b*) Central Provinces and Berar	Two crores and 45 lakhs of rupees.
(*c*) Assam	One crore and 13 lakhs of rupees.
(*d*) Sind proposed to be newly formed into a Province .	74 lakhs of rupees.
(*e*) Orissa proposed to be newly formed into a Province .	Under 80 lakhs of rupees.
(*f*) Andhra Province if formed .	About 3 crores and 50 lakhs rupees or 3½ millions of rupees.

POPULATION.

Proposed Sind Province . .	About 40 lakhs.
Proposed Orissa Province .	About 1 crore.
Andhra Province if formed .	1 crore and 70 lakhs.

In the matter of area also, Andhra Province, if formed, will be far larger in extent than the proposed Provinces of Sind and Orissa and a few other Provinces in India.

It may therefore be submitted that Andhra's claim for a separate Province, to say the least, is most reasonable and practicable from every point of view.

6. There are various other considerations of an equally important character which justify their claim for a separate Province. Andhras belong to a very ancient race and have as brilliant a past as any other nation in the world. They distinguished themselves both in war and peace. There were among them distinguished soldiers and great heroes. Their Kings ruled over extensive territories. Once their kingdom extended from the Arabian Sea to the Bay of Bengal including Magadha in the North of India. They produced great masters in literature. Their arts and industries were once the objects of much praise in both Europe and Asia. Their skill in architecture and fine arts is well known. History bears testimony to their high culture, great political sagacity and sound statesmanship. They have not as yet forgotten their historic individuality, and they feel a certain unity and distinct entity—and with this sense of separate entity they live amidst a number of other races in the Madras Presidency. This union of heterogeneous races whose language, customs, habits, tradition and sentiments differ a good deal from theirs is injurious to the free and unhampered growth of the race. The Andhras, at present, are scattered in different places, in different groups and under different Governments. There is in fact no apparent identity of interest in them. The feeling that the interests of all the Andhras are identical can be felt only by the existence of a common Province. There is no doubt that the creation of an Andhra Province would give a powerful impetus to the growing public spirit of the Andhras and the rapid development of the Andhra country in all directions.

7. It may be mentioned in this connection that the principle of formation of separate Provinces on linguistic basis was conceded by the First Round Table Conference in connection with Orissa and Sind and a Boundary Commission was appointed by the Government of India to fix the boundaries of Orissa. This Commission has necessarily to determine, *inter alia*, the boundary to the north of Andhradesa in the Presidency of Madras, which will be the southern boundary of Orissa to be formed. It would be, therefore, not only most convenient and opportune, but also just and equitable that the claims of the Andhras for a separate Province should be recognised and a Boundary Commission be immediately appointed to work in conjunction with the Oriya Boundary Commission so as to settle the common boundary between the Andhra and Oriya Provinces.

8. In the light of the above facts, it is requested that the principle accepted in the case of Orissa and Sind be extended to the Andhras in the Presidency of Madras and an Andhra Province be immediately recommended and formed.

10th November, 1931.

ANNEXURE 4.

A Province for Karnataka.

Memorandum by Mr. B. Shiva Rao.

Although the problem of the redistribution of the existing Provinces of British India has not been taken up in a general form by the Round Table Conference, it has received a considerable amount of attention in so far as it relates to the two cases of Sindh and Orissa. If the scheme for the separation of Ambala Division from the Punjab and its fusion with the United Provinces be accepted—I express no opinion on the merits of the proposal—the question is bound to arise whether it would not be advisable to divide the United Provinces into two administrative units. Public opinion in India is being directed to consider the redistribution of the Provinces so as to facilitate the administration of autonomous units in a self-governing India.

The separation of Sindh from the Bombay Presidency, with regard to which an official Committee has made a Report, has been urged by the Muslim Community on two grounds:—

(1) Sindh as a separate Province will be a predominantly Muslim area;

(2) The great distance between Sindh and the rest of the Bombay Presidency prevents adequate attention being paid to the needs of the people of Sindh.

The case of Orissa being made a separate Province for the Oriya-speaking people was put forward by the Raja of Parlakimedi at the last Session of the Round Table Conference. His main argument was that Orissa is an area with a single language and definite historical and cultural associations and should be under one administration instead of being parcelled out (as it now is) between four British Indian Provinces—Bihar and Orissa, Bengal, the Central Provinces and Madras.

The position of Karnataka is, in some respects, similar to that of Orissa. This linguistic area (which comprises the Dharwar, Belgaum, Bijapur and North Canara Districts and a portion of Sholapur Taluka in the Bombay Presidency; South Canara, Bellary and the Nilgiris Districts, with portions of the Salem, Coimbatore and Anantapur Districts in the Madras Presidency) is divided between the two southern Provinces. Together with Coorg, which also is part of the area, it will cover over 35,000 square miles and have a population of over 7,000,000. (*Note:* According to the Census Report of 1921, there was a population of over 6,000,000 and the general increase in the population during the decade averages 10 per cent.)

It is not necessary to argue in general the case for a redistribution of the Provinces, on a linguistic, or some other recognised basis. Even in 1919, this problem was present before the Secretary of State for India and the Viceroy.

The Montagu-Chelmsford Report has the following passage on the subject of creating new Provinces:—

> ". . . We are impressed with the artificial and often inconvenient character of existing administrative units. We have seen how historical reasons brought them about. We cannot doubt that the business of Government would be simplified if administrative units were both smaller and more homogeneous; and when we bear in mind the prospects of the immense burdens of Government in India being transferred to comparatively inexperienced hands, such considerations acquire additional weight. It is also a strong argument in favour of linguistic or racial units of Government that, by making it possible to conduct the business of legislation in the vernacular, they would contribute to draw into the arena of public affairs men who were not unacquainted with English . . . We are bound to indicate our clear opinion that wherever such distributions are necessary and can be effected by process of consent, the attempt to do so should be made; and therefore we desire that it should be recognised as one of the earliest duties incumbent upon all the reformed provincial governments to test provincial opinion upon schemes directed to this end."

It is to be regretted that the Government has taken no action in the direction suggested by the Montagu-Chelmsford Report. On the other hand, resolutions moved by non-official Members of the Bombay and Madras Legislative Councils and of the Council of State for the appointment of a Committee to bring about a unification of the Karnataka were opposed by the Government. In 1926 and 1928, Dr. Rama Rau, a Member of the Council of State, moved a resolution for the appointment of such a Committee; but it was rejected by the Council because of Government opposition. The Madras Legislative Council adopted a resolution in August, 1929, moved by Mr. P. Siva Rao (Member for Bellary) asking for urgent steps to be taken for the formation of a Karnataka Province, comprising the Kanarese-speaking tracts of the Madras and Bombay Presidencies and Coorg. The resolution was passed by the Council, notwithstanding official opposition. A similar resolution was brought at the same time by Mr. Jog in the Bombay Legislative Council, but failed to secure passage through the House in spite of general non-official support.

It may be useful in this connection, to quote the Nehru Report, who made the following observations on the claims of Karnataka for being made a separate Province:—

> "The case for the Karnataka was placed before us by a representative of the Karnataka Unification Sangha, and the Karnataka Provincial Congress Committee. It had been ably prepared with a wealth of information, historical, cultural and statistical. All our questions were answered satisfactorily and, in our opinion, a strong *prima facie* case for unification and the formation of Karnataka as a separate Province was made.....Parts of the Karnataka lie in Indian States, notably Mysore, and there are obvious practical difficulties in the way of uniting these with the rest. It might also not be convenient to unite the small islands of the Karnataka on the other side of Mysore Territory as these would be cut off from Karnataka proper by Mysore. But even so, a sufficiently large area remains..... financially the position of the Karnataka is very strong, and even at present there is a considerable surplus in the British part of the Karnataka."

Finally, they recommended that—"Parts of Karnataka except the small islands on the other side of Mysore territory should be separated from

the Provinces in which they are at present included and formed into a single separate Province."

It should also be added that at the All-Parties Conference at Lucknow, recommended in 1929 in adopting the Nehru Report that—" A Committee may be appointed to take all necessary steps to constitute Karnataka, and into separate Provinces."

The six All-Karnataka Political Conferences held since 1920, and the three Karnataka Unification Conferences since 1924 have passed unification resolutions unanimously. Besides these, the Veershaiva Mahasabha held in Bangalore in December, 1927, the Merchants' Conference, held in August last in Bagalkot, have demanded unification. The Local Boards of all the Bombay Karnataka Districts, and of Mangalore, many Taluka Local Boards as well as a number of municipalities, have passed such resolutions and sent them to the Government. A general manifesto signed by 34 leaders of Karnataka, representing all districts, all castes, creeds, interests, and all political opinions, was issued in 1927 to the public, asking them to sign a declaration to the effect that they desired unification.

A questionnaire issued to about 200 gentlemen in Karnataka brought 125 replies, only one being against unification.

The following bodies have adopted resolutions within the last few months urging the creation of a separate Province for the Karnataka:—

(1) The Karnataka Chamber of Commerce.
(2) The Veershaiva Tarauna Sangha, Bagalkot.
(3) The Cotton Market Association, Bagalkot.
(4) The Cloth Merchants' Association, Bagalkot.
(5) The Hubli Municipal Borough.
(6) The Karnataka Unification Association, Sholapur City.
(7) Sirsi Municipality (North Kanara District, Bombay Pres.).
(8) The Basaweshwar Vidya-Vardhaka Sangha, Bagalkot.
(9) Ilkal Municipality.
(10) Dharwar District Local Board.

There can thus be no question either as to the necessity for undertaking the reconstitution of the existing Provinces into smaller and homogeneous units, or, in particular, as to the trend of opinion in the different parts of the Karnataka on the subject of their unification. If the principle of self-determination were to be applied, an overwhelming majority of the people of Karnataka would be found to be whole-heartedly in favour of such a step.

The only other consideration that may possibly be urged by critics of the scheme is whether the people of the Karnataka would be in a position to bear the financial burden of a separate administration. But if Assam can be autonomous Province with a revenue of Rs. 260 lakhs, there is no reason why Karnataka, which, under the existing division of revenues as between the Central and Provincial Governments, would have an income of Rs. 233 lakhs from the provincial sources alone, cannot face a similar responsibility. Moreover, it may safely be said that, with adequate opportunities for development, Karnataka, with its long coast line, and rich natural resources, would rapidly increase its prosperity, and become capable of the comparatively heavier burdens that would be involved in autonomous administration.

The complaint of the people is that the present division of Karnataka leaves them in a position of helpless minorities, both in the Bombay and Madras Presidencies, where they form 19 and 6 per cent. respectively of their total population.

A further handicap is furnished by the fact that whereas the people speaking other languages, such as Gujerati and Mahrathi, in Bombay, and Tamil and Taluga, in Madras, live in contiguous areas, the Kanarese people are scattered over a wide area with Mysore State in the centre.

Communications are not easy in many parts of the area on account of hills and forests and rivers. The consequence has been a neglect by the two Provincial Governments of such essential needs of the people as education, health, forests, roads, irrigation and harbour development.

It is estimated that the people of Karnataka contribute to the Governments (both Central and Provincial) Rs. 48 lakhs more than is spent on them. For a High Court and a University the people have to go as far as Bombay and Madras in their respective Presidencies; there cannot be the least doubt that the present anomalous division constitutes a serious grievance and stands in the way of the cultural and economic development of the people.

APPENDIX A.

AREA AND POPULATION OF THE PROPOSED KARNATAKA PROVINCE.

(As per Census Reports of 1921.)

8 Districts.

Name of District.	Area in square miles.	No. of		Total population.
		Towns.	Villages.	
1. Belgaum	4,611	7	1,062	952,996
2. Bijapur	5,707	8	1,120	796,877
3 Dharwar	4,606	17	1,260	1,036,924
4. North Kanara	3,946	7	1,257	401,727
5. South Kanara	4,021	7	798	1,247,368
6. Bellary	5,713	10	911	862,370
7. Coorg (Kodagu)	1,582	2	377	163,838
8. Nilgiris	982	3	54	126,519
8 Districts	31,168	61	6,839	5,588,618

5 Outlying Districts.

1. Madagsira (District Anantpur	443	1	57	85,595
2. Hosur (District Salem)	1,217	1	437	186,430
3. Krishangiri (District Salem)	656	2	183	167,302
4. Kollegal (District Coimbatore)	1,076	1	48	35,356
5. Sholapur (District Sholapur)	848	1	150	234,461
5 Talukas	4,240	6	911	769,144
Grand Total	35,408	67	7,750	6,357,762

ANNEXURE 5.

Separation of Oudh from the Agra Province.

Memorandum by Khan Bahadur Hafiz Hidayat Husain.

In this note I draw attention to the administrative necessity of separating the Agra Province from the Province of Oudh. The United Provinces of India stretch from the plains of Bihar on the East to the plains of the Punjab on the West, and from the low mountain ranges of Central India on the South to the immense barriers which divide British India from Tibet, and Nepal on the North. They include four distinct tracts of country. The area of the United Provinces from which I am excluding the feudatory States of Ranpur, Tehri and Benares is 106,000 square miles or just slightly less than that of the British Isles.

2. The Province of Agra originally formed part of the Presidency of Fort William. It received individual status in 1834 as the Province of Agra. The Province of Oudh was annexed in 1856 and became a Chief Commissionership with a separate administration. The two Provinces were first brought together in 1877 under the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, and in 1902 were finally amalgamated in a single Lieutenant-Governorship and became known as the United Provinces of Agra and Oudh. In 1921, the Lieutenant-Governor was given the designation of Governor.

3. The Province which is divided into 48 districts has, according to the Census of 1931, a population of close upon 48½ millions. It is notoriously too heavy a charge for a single administration and should therefore be split up. Both the Provinces of Agra and Oudh suffer from lack of reality in the administration. The progress of both under one system of administration is retarded and neither has the opportunity to develop on natural lines. Small homogenous areas autonomous in their character ought to be the aim of the future United States of India. It is already on the cards that the Central Provinces are going to be split up, the Hindi-speaking districts may be attached to the Agra Province and the Mahrathi-speaking districts may go to Bombay. It would, therefore, be in the fitness of things that Oudh should be separated from Agra Province.

4. The Taluqdari system of Oudh and its special laws of primogenitive adoption, etc., are unique in the history of India. Oudh is well able to bear its own financial burden. Even now it has its own highest Court of Appeal both Civil and Criminal. It has a separate cadre of judicial officers. It has its own rent and revenue laws. It has its own University.

Oudh, rightly styled "The Garden of India," has an area of 24,000 square miles and a population of 13 millions of people. For generations past it formed a separate State ruled by its own Nawabs or Kings.

The unique position of the Taluqdars of Oudh, their peculiar status in the land under them, their hold on their tenantry, their patriotism, and above all, their unflinching loyalty to the Government of Great Britain entitles them to their recognition as partners of the Government in the administration of their Province, to the maintenance of their rights and privileges granted to them under Sanads, indeed to the final redemption of all those engagements and promises held out to them from time to time. This the Taluqdars fear is impossible unless the Province of Oudh is made a unit of administration by itself.

5. The Zemindari system of the Province of Agra resembles in many respects the Malgazari system of the Hindi-speaking districts of the Central Provinces. The status of the tenants is correspondingly similar. The soil of Bundelkhund in the Agra Province resembles that of the Jubbulpore Division of the Central Provinces. The Zemindars of the Agra Province are by law recognised as owners of every inch of land within the ambit of their Zemindari. In common with the Taluqdars of Oudh, they desire

that their status in the land be recognised as one of the fundamental rights in the new constitution, and that there be no fear of confiscation and expropriation of their properties, which should remain immune from duties or taxes, other than the land revenue, which they are pledged to pay to the Government of the day.

6. It is, in my opinion, impossible to reach the tenantry and improve their condition till the Provinces are separated and the charge for administrative work is reduced. In proposing this scheme, I have duly taken into consideration homogenity in area, administrative convenience, linguistic and racial unity. Oudh, unlike Agra Province, speaks that dialect of Hindustani which was termed Eastern Hindi in the Census report of 1921. Perhaps there is no other part of India that can undertake its own autonomous administration with so little disturbance of the present arrangements as Oudh.

November 16th, 1931.

ANNEXURE 6.

MEMORANDUM ON THE REPRESENTATION OF LAND HOLDERS' INTERESTS IN THE LEGISLATURES.

By Dr. Narendra Nath Law, M.A., Ph.D.

The question of special representation of certain interests, Labour, Commerce, Depressed Classes, Landlords and the like, came up before the Federal Structure sub-Committee of the last Session of the Round Table Conference in connection with the distribution of seats in the Federal Legislature. The conclusion of this sub-Committee on the subject, recorded in paragraph 34 of their Second Report, was that, "subject to any report of the Minorities sub-Committee, provision should be made for the representation, possibly in both Chambers and certainly in the Lower Chamber, of certain special interests, namely, the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce (European and Indian), and Labour." Both Mr. Sastri and Sir Tej Bahadur Sapru made sympathetic reference to the need of the special representation of these classes when the question was raised by the Chairman of the Federal Structure sub-Committee. The Minorities sub-Committee did not come to any definite conclusions on the subject, that is to say, on the question of special seats for these interests in the Legislatures, but there is nothing to warrant the view that the sub-Committee had no sympathy for the claims of these interests for special representation. On the other hand, the conclusions arrived at so far are distinctly favourable to such claims being recognised definitely in the composition of the Legislatures in the future.

It is, however, desirable that the position should be cleared up by those members of the Conference who would be vitally affected by its decisions relating to the special interests. Speaking for myself as a Landholder, I would like to press upon you particularly the claims of the landholding interests in India for special representation on a proper and adequate scale. I am sure I can count upon a sympathetic consideration of our case. With your permission, therefore, I venture to put forward a few suggestions which, I hope, will receive that earnest attention which the weight of the subject deserves.

I may recall for a moment that a Statutory Commission rejected our claim for special representation in the Legislature though retaining special seats for Commerce and Universities. The reasons given were neither substantial nor conclusive, but roused our utmost anxieties as being indicative of a certain frame of mind in responsible quarters which, if not

challenged at the outset, might have far-reaching effects on our future interests and status. Our hope, however, lay in the fact that this view contradicted the findings not only of the Indian Central Committee but also of every Provincial Government except the Government of Assam where there is no special representation of Landholders' interests. It is not for us to reiterate that Mr. Montagu and Lord Chelmsford had in their Joint Report on Indian Constitutional Reforms observed that the landed aristocracy of India are recognised as her "natural and acknowledged leaders." In the United Provinces and the Punjab, the great Landholders occupy a unique position in society. In Bengal, too, round the Zemindars at the centre, has grown up an intricate system of rights and duties which it would not be possible to ignore. The Statutory Commission took some pains in drawing up a table supporting their contention that the landholding interests have been sufficiently represented on the various Provincial Councils even without the special representation accorded to them. This shows incidentally, the important part the Landholders still play in the public life of the country and the trust and respect which they command. But the Statutory Commission used the figures to prove that the claim of the Zemindars for special seats was superfluous. It is strange that it did not occur to them that the Landholders had their own special interests to represent and protect, and a Landholder who was sent up by a general constituency might often, quite conceivably, find himself in the most unhappy position of either having to sacrifice the interests of his own class or those of a constituency which he represents in a case of conflict of interests. Such conflicts are by no means likely to be rare, nor are they unforeseen. Thus, for instance, on all matters of tenancy legislation, taxation of incomes, payment of land revenues and the like, the interests of the Landowners require to be specially represented. It is very difficult to postulate identity of interest among the different classes in such cases. We are fortified in our contention by the findings of the Government of India in their Despatch on Proposals for Constitutional Reform. I take the liberty of quoting the relevant extract from their Report:—

> "We have ourselves no hesitation in holding that this form of special representation should continue. Both the arguments and the statistics used by the Commission might, to our mind, have been used with special effect to destroy the special representation either of Commerce, or of the Universities both of which the Commission retain..... Such questions as tenancy and land revenue measures may be expected to occupy more prominently the attention of the Provincial Legislatures in the near future, and in the controversies likely to ensue, the landlords can reasonably claim that they should not be deprived of their special representation at a time when the extension of the franchise may well increase the difficulty of their securing representation on a general register." (Para. 39.)

With regard to the last point, it may be observed that we claim special representation not because of the possibility of our failure to be returned on a general register. Even if we are returned from a general constituency, we claim it, for reasons given above, all the same. It is not a correct reading of the situation to suggest that with political progress, the Landholders will necessarily have a diminishing influence in the public life of the country. The distinguished roll of public servants drawn from the landholding classes in our country is by no means negligible and in spite of cases of atrophy here and there, the general conclusion is by no means inevitable that the landowning interests of a country will be a back number in the Free State of India. Our interests and connections, ties and affinities, are too vast to permit us to occupy a position of second-rate importance in the India of the future. May I mention, as an illustration of this point, that the total revenue paid by the Landholders in India exceeds even the yield of the income-tax? That fact alone establishes our supreme interest in the constitutional arrangements of the future.

I may reiterate, however, what one of my distinguished colleagues said in the Provincial Constitution sub-Committee that in pleading for special representation for ourselves, we do not intend to encroach upon the rights of other communities for representation. On the other hand, I stand for the representation and protection of every special interest in the State; but its importance must be considerable and there is no denying as to the weight of the Landholder's claim for special representation. If I may be allowed to digress here for a moment, I will take the liberty of mentioning that a tendency of modern political thought is the increasing recognition of the importance of special social and economic interests and groups, and that much of the economic, political and social unrest of to-day is due to the failure of the mechanism of the modern State to adjust itself to the diversification and specialisation of these group interests. It is felt that the safety of democracy lies in the perfection of group life and its representation in responsible Legislatures. I make bold, with your permission, to refer to this new orientation of political thought and practice in order to remove the misconception that to ask for special representation is necessarily against national interest.

As to the number of seats to be allotted to us, in view of the importance of our interests and stake in the country, and of the comparative smallness of our number, we are entitled to claim an adequate basis of representation other than population. The need for it is all the more clear since it is obvious that in future the Legislatures are going to be largely increased in size. The claim of the landholding interests in Assam for representation should be recognised. As an illustration and nothing more than an illustration, I may be permitted here to refer to the insistent representations of the landholders of Goalpara as to the hardships they have been labouring under on account of the absence of their representation in the Legislature. It is needless to add that we claim proper and adequate representation, for reasons which I have already discussed, in both the Chambers of the Federal Legislature and the Provincial Legislatures.

As regards the *method* of representation, whether it should be direct or indirect, the procedure will be determined by the manner in which the two Houses of the Federal Legislature and the Provincial Legislature, will be constituted. The Federal Structure sub-Committee was " almost unanimously " agreed that the Upper Chamber of the Federal Legislature should be elected by the Provincial Legislatures on the single transferable vote. Whether this view is accepted by the full Conference or not, there is no doubt that the Landholders are eminently suited for membership of the Upper House of the Legislature But this should be in addition to their representation in the Lower House, which in any case must be direct. If a Second Chamber is agreed for the Provincial Legislatures also, we have no doubt that the Landholders will be specially represented there. I have not intentionally raised the question of the number of seats that we want in each case for the reason that this may be left to future discussion and negotiation.

It is needless for me to emphasise, in conclusion, that the contentment of the Zemindars is a national asset of no mean value. On return from England after the adjournment of the last Session of the Conference, I have been struck by the anxiety with which my fellow Zemindars have been following the deliberations of the Conference. I have had the opportunity and honour of consulting their opinion, and I have tried to place their views, as I read them, in this Memorandum with as much moderation as possible. I take the liberty of appealing to my fellow delegates to realise the importance and justice of our claim and recognise definitely the need of adequate and proper representation of our interests in the Legislatures of our country.

22nd September, 1931.

ANNEXURE 7.

MEMORANDUM ON THE POSITION OF LANDHOLDERS (*i.e.*, ZAMINDARS AND PROPRIETORS OF PERMANENTLY SETTLED ESTATES) IN THE NEW CONSTITUTION.

By the Maharaja of Darbhanga and the Raja of Bobbili.

The position of the big Landholders of India in any new constitution requires to be carefully considered by the Delegates, British and Indian, of the Round Table Conference. In the claims that large communities are putting forward for safeguards, the case of a section, which is small in numbers, is apt to be overlooked. But if the importance of this small section is realised, if the stake of the Landholders in the country is adequately appreciated and if the part they have so far played in steadying and sobering public opinion is understood, there will be no hesitation in conceding to them their rightful position in the new order.

It has to be regretfully stated that at the first Session of the Conference, the case of the Landholders has not received that attention which it deserved. Sub-Committee No. III (Minorities) of the Conference which was expected to consider the question, devoted itself almost entirely to the claims of minority communities. It did not deal, with the single exception of the British commercial interests, with any of the *interests* which are in a minority as distinguished from communities. This result was perhaps inevitable as the big landholders, the representatives of the class on the Conference, the Maharajadiraja of Darbhanga, the Raja of Parlakimedi, were not members of the Committee. It is our earnest hope that this grave defect will be rectified before the Minorities Committee meets again.

Nor did sub-Committee No. VI (Franchise) deal with the question. That sub-Committee quite naturally felt that the nature and number of special constituencies should be first settled before it can deal with the nature of the franchise for such constituencies. That the problem was present in the minds of the members of the sub-Committee is obvious from the Report. The Franchise sub-Committee states: " we are of opinion that the franchise qualifications for special constituencies depend essentially on the nature of those constituencies. We are not empowered to consider the latter point nor are we in possession of information as to what special constituencies are contemplated. The question requires examination by a competent body."

The only Committee that, in spite of lack of representation on that body, considered the position of Landholders, is sub-Committee No. I (Federal Structure). In the course of the Report, it says: " opinion was unanimous in the sub-Committee that, subject to any report of the Minorities sub-Committee, provision should be made for the representation, possibly in both Chambers, and certainly in the Lower Chamber, of certain special interests, namely, the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, *Landlords*, Commerce and Labour." It is noteworthy that there was unanimity of opinion as regards the need for special representation of Landlords in the Federal Parliament. How much more necessary it is to secure their representation by special constituencies in Provincial Legislatures, will be obvious to anyone who has appreciated the scheme of the Provincial sub-Committee. It has also to be noticed that the Federal Structure Committee expected the Minorities Committee to deal with and report on the claims of the Landlords for special representation.

It is under these circumstances that it has become imperatively necessary to present the case of the Landlords to the members of the Conference.

Status of Landlords.

The term Landlords, as used in connection with the demand for special representation in any constitution, is not clearly understood. It is apt to be confused with the owners of large areas of landed property under what is termed ryotwari tenure. The term has a specific connotation in

Indian politics. It has been understood to apply to the class of owners who are termed Zamindars and who are proprietors of land and not mere lessees from Government, of land. It is also sometimes thought that Zamindars were mere farmers of revenue under old assignments of Moghul Emperors. Some were of that character, but most of the Zamindars and in particular almost all the Zamindars of Southern India, and the Taluqdars of Oudh do not belong to this class. Their family history dates back to several centuries. Their ancestors were chieftains and rulers of vast areas. The houses of Darbhanga, Balrampur, Murshidabad, Burdwan, Venkatagiri, Bobbili, Jeypore, Pithapuram, to mention only a few, have historic traditions, not second to some of the important Indian States. Over a century back they entered into arrangements with the British power whereby in lieu of protection against invasion they undertook to pay a certain subsidy. These sanads or treaties are in their eyes, and must be regarded by the Paramount Power as sacrosanct.....as sacred as the treaties with present-day Ruling Princes. In essence there is hardly any difference between the sanads granted to these ancient Zamindars and the Treaties entered into with Ruling Chiefs. This historical perspective is necessary to appreciate and understand the position of the Landlords, and the claim they now put forward.

The Zamindars, holding a large stake in the country and to a certain extent conservative by tradition and instinct, have no desire to arrest progress or to thwart the legitimate ambitions of their countrymen. They are a part of the nation and are bound to take note of the surging tide of nationalism, and the unanimous desire for Dominion Status for India. But they will be false to their principles and untrue to their Order if they do not desire to preserve the inherited rights of their class and secure legitimate guarantees in the new order of things.

Landholders' Claims.

They claim that the Zamindars should have special representation in the Legislatures Provincial and Central as hitherto, and urge respectfully that this representation is more necessary now than hitherto.

(2) Realising that no reasonable amount of special representation can by itself be an adequate safeguard, they urge that in all Provinces there should be established bi-cameral Legislatures, the Upper House being a steadying influence on the occasional impetuosity of the popular Chamber.

(3) Lastly, in view of the sanctity which they attach to the agreements entered into with them and the sanads granted to them by the paramount power, they urge for the inclusion in the fundamental rights of a clause securing the inviolability of the terms of such agreements and sanads. These clauses will be elaborated in this and succeeding papers; the present memorandum will deal with the question of special representation.

Special Representation of Landlords.

Ever since the inauguration of representative Legislatures in India, this class of Landholders has had a right by special representation of membership of these bodies.

In the Minto-Morley reforms this was conceded, and they formed a fourth of the strength of the elected members. In addition a considerable number of Landlords were nominated. This right was recognised and confirmed by the Montagu-Chelmsford scheme of reforms. Attention is invited to the very cogent reasons given in the Report on constitutional reforms of Mr. Montagu and Lord Chelmsford for the special representation of this class. It has to be remembered that the interests peculiarly affecting this class are still under the control of Executive Councillors and not popularly elected Ministers, and that they form a reserved subject. If it is further remembered that there is a considerable official bloc in the councils which is expected to hold the balance even between conflicting interests—it will

be clear how much more necessary it is, under the proposed scheme of provincial autonomy, to give adequate representation to Landlords.

The Simon Report.

An unfortunate recommendation of the Simon Commission that this representation may be abolished has led to the question being re-opened and has created the most widespread and genuine alarm among the Landlords. It can with perfect accuracy be stated that no recommendation of the Commission has been more severely and unanimously criticised than the one advocating the abolition of special representation to Landlords. The basis of the Report and its reasoning are alike incorrect and fallacious. The Commission was incorrect in its estimate of the number of Landlord representatives and wholly misappreciated the need for their representation by special constituencies.

It would perhaps be better if the Provincial Governments and the Government of India were left to deal with these recommendations. They at least could not be charged with motives of self-interest or with a desire to indulge in special pleading for their own Order.

The Provincial Governments' Criticism.

(1) *Madras.*

The Government of Madras in its Despatch dated 11th August, 1930, says " The Government of Madras consider that the Commission was acting on a wrong assumption when it considered that Landholders would necessarily exert such influence that their return would be assured and that, therefore, there was no necessity for a separate electorate. The signs of the times tend to the other direction, and it is extremely doubtful if, in the future, Landholders will be able to exercise the same interest as at present. There is a danger that Landholders, if they are sure of obtaining a certain number of seats by nomination, will not take the trouble to stand for election, and rather than run the risk of a council in which Landholders are represented by nominated members alone, the Government would prefer to continue their special electorates, as they originally suggested."

The Bombay Government is equally emphatic, and would, indeed, extend their representation. In its Despatch No. 1/161, dated 13th August, 1930, the Bombay Government states: " The Government of Bombay are unable to accept the recommendation regarding the special representation of Landholders, and adhere to their proposals submitted to the Indian Statutory Commission that, besides continuing the present representation of the Landholders, an additional constituency for them should be created for the southern division of the Presidency and one seat allotted to it. The argument that by virtue of standing and influence they have opportunities of being returned in the general constituencies applies to an equal extent to the commercial communities also, which, under the Commission's recommendation, are to have special electorates provided for them. The Government of Bombay, therefore, are of the opinion that in view of the importance of the Landholders and the steadying influence, which they are likely to exercise in the councils, the privilege of special representation now held by them should be continued, and that, as Landholders in the southern division owing to the smaller number of electors in it, have, as a rule, had very little chance in the election against candidates in the central division a separate seat should be allotted to them in the southern division as suggested above."

Bengal.

The Government of Bengal takes the strongest objection to the extraordinary recommendation of the Commission, and in its Despatch No. 219

A.C., dated 15th August, 1930, says, "To the recommendations of the Commission on the subject of the Landholders' constituencies, the strongest objection is taken by several members of the Government. They urge that *the Landholders who are returned by general constituencies do not represent the Landholders' interests in the Legislative Council, but are governed by the views of the people in their constituencies and of the political party which has supported them in their elections.*

"A further argument used is, that the interest of the Landholders' representatives in stabilising the constitution is valuable, and, as it is considered important to introduce into the council every possible stabilising element, there is general agreement that the separate Landholder constituencies should be retained. There is some difference of opinion on the question whether their number should be increased proportionately to the increase in the number of members in the council, the majority being in favour of giving the Landholders' the same proportion as in the present council. But the actual number must depend on the decision about a Second Chamber." The Bengal Government's memorandum is important in two respects. It shows the futility, from the Landholders' point of view, of the argument that they can be returned by general electorates, and it correctly lays down that the principle of special representation is unaffected by the constitution of a Second Chamber.

The United Provinces.

In view of the present agrarian situation in the United Provinces, the views of the Government of that Province must carry special weight. In its Desptch No. 4949 C, dated August 23rd, 1930, it says, "The great Landholders of this Province have special electorates which return six members of the Legislative council. Can the ground that their standing and reputation, and the influence which they exert in their own localities have enabled them to share a large number of seats in the general constituencies, and are therefore such as to render special protection unnecessary, the commission have, subject to a certain safeguard to secure them their present representation, recommended the withdrawal of their respective special representation. This Government are unable to endorse the Commission's recommendation. Government hold that the representation which the great Landholders have been able to secure has not been disproportionate to their political importance in present conditions. It is almost inevitable that as the electorate gains political experience, it will tend to prefer representatives drawn from sources other than the great landed families and *the need for special representation is likely to increase rather than decrease.* This Government are unanimously and strongly in favour of the retention of the great landholders at the existing ratio and the Governor-in-Council desires to repeat the recommendation placed before the Commission. I am also to add that the Ministers consider that similar bodies of equal status (to the Agra Province Zamindars' Association) in other Provinces should also return their own representatives by separate electorates to both Chambers of the Provincial Councils and also to the Federal Assembly and the Council of State."

Bihar and Orissa.

The Government of Bihar and Orissa is not a whit behind the other Governments in this behalf and in their Despatch No. 4368 A.R., dated 23rd August, 1930, say, "The proposal to abolish special representation for the great Landholders has been strongly resented by the Landholders of this, as of other Provinces. Due weight must be given to their representations. The Commission appears to have been influenced unduly by the fact that the great Landholders have succeeded in all the Provinces taken together in being returned for four times as many seats as were specially reserved for them. It is to be noted, however, that in Bihar and Orissa, where the position and influence of the Landholders is as great

as, or greater than in other parts of India, the Landholders have not come off so well; they have only secured election in ten of the general constituencies in addition to the five reserved seats, and even these members, though possessing the qualification needed for the Landholders' constituency, *are not elected in that interest.* "Though prophecy is not easy and knowledge is impossible," there appears full justification for their apprehension that, with a larger number of voters, but with constituencies smaller in area, the Landlords will have greater difficulty in securing election and will not enjoy as favourable a position as at present. The Local Government attach great importance to the due representation of this class, not *qua* Landlords, but as stake-holders in the country, who can be trusted to add a sound element of responsibility to the councils, which may, under the democratic constitution now proposed, consist largely of persons who have little to lose by ill-considered legislation or ill-advised executive action. The presence of such an element in the council will be the more necessary when the official bloc is removed and the number of nominated members is reduced. His Excellency in Council and his Ministers consider that the arguments in favour of special representation completely outweigh the single argument put forward for its removal, and urge strongly that reserved constituencies should be kept for the Landholders in no smaller proportion than at present."

Punjab.

The Punjab Government in its Despatch No. 4766—8, dated 14th August, 1930, says: "We are impressed by the fact that, with the extension of of the franchise to a portion of the tenantry and a lowering of the rural property qualifications, Landholders of the class which stood for the special constituencies may have difficulties in securing representation. We consider them an important interest in the Province, and as we do not propose to have a Second Chamber, we would retain special representation for them in the Council."

This striking unanimity of official opinion cannot be ignored and must be given due weight. Nor, till the Report of the Simon Commission was published, was there any difference in non-official opinion on the subject. All the provincial committees which were associated in the enquiry of the Indian Statutory Commission recommended the retention of special representation for Landlords. The Indian Central Committee also urged its retention.

The View of the Government of India.

The picture will be incomplete without the views of the Government of India on the subject. In their Despatch No. 1 of 1930, dated 20th September, 1930, the Government of India state: "The recommendation of the Statutory Commission conflicts with the view expressed by the Indian Central Committee that this class of special representation should be retained. Every Provincial Government except the Government of Assam, where there is no special representation of Landlords, agrees with the Indian Central Committee, and considers that the special representation of the great Landholders is still needed in view both of the position of the class in the country and of the steadying effect which it is likely to have in the new Legislatures. The suggested abolition of their special representation has been received with feelings of resentment and dismay by the great Landholders themselves, and one of the first steps which they took on learning of the proposal was to form a representative delegation to present to His Excellency the Viceroy an address containing a weighty protest against the withdrawal of their present privilege. Particular objection has been taken by the Landlords themselves to the suggestion made by the Commission that, in the event of their failing to secure representation equivalent to the present number of their special constituencies, their representation should be obtained by nomination."

It may be emphasised here that the Government of India have rightly gauged the feeling of the Zamindars and Landholders on the proposals of the Simon Commission. The resort to nomination is a reactionary suggestion and cannot be offered to a class of people who have hitherto enjoyed the right of election. It is further open to grave doubt whether any section at the Conference would agree to the principle of nomination for any interest since such principle is fundamentally opposed to the scheme of provincial autonomy. Is the Governor of the Province to nominate and if so, is he to do so on the recommendation of the Ministry which will thereby augment its own strength and position in the Council?

The views of the Government of India are unequivocal on the need for the continuance of special representation for Landlords. The Despatch says: "We have ourselves no hesitation in holding that this form of special representation should continue. The success in general constituencies of persons possessing the special landlord qualification can rightly be regarded as a healthy sign of a greater readiness on the part of a conservative class to recognise their obligations and take up political responsibilities under an increasingly popular system of government. But prejudices still survive, and unless special constituencies are retained many leaders of this important class may still be unwilling to expose themselves to the hazards of election by general constituencies; and *those Landholders who are elected by general constituencies may prove to be unrepresentative of the landholding interest.* Such questions as tenancy and land revenue measures can be expected to occupy more prominently the attention of the Provincial Legislatures in the near future, and in the controversies likely to ensue the Landlords can reasonably claim that they should not be deprived of their special representation at a time when the extension of the Franchise may well increase the difficulty of their securing representation on a general register. The Government of India thus conclude their final and considered recommendation. "On the broad issue whether or not there should be special constituencies for the representation of the great Landholders we have no hesitation in accepting the view of the Indian Central Committee and of the Provincial Governments that they should be retained both in the Central and in the Provincial Legislatures."

In spite of the strong support of the Provincial Governments and the Government of India, the Landholders are disquieted as the proceedings of the Round Table Conference have not so far allayed their apprehensions or guaranteed their rights. This feeling was reflected in a resolution moved by a Landholder member in the Council of State so recently as September 23rd, 1931, whereby he urged that adequate representation should be given to Landholders in the future constitution of India with a view to protect their interests. The spokesman of the Government of India quite legitimately pointed out that the Government had supported the claim and suggested that the Delegates to the Round Table Conference may now be addressed on the subject.

The Landholders' delegation at the Conference, therefore, urge on their colleagues the justice of their claims and the need to meet them. They wish to point out that their stake in the country requires that they should be heard in vindication of their rights in the popular Houses of Legislature both Provincial and Central. They respectfully point out that if Landholders are returned through general electorates they will necessarily feel bound by the mandates of such electorates and that in those very vital issues where their class has to be represented, their obligations to the electorates will conflict with their duty to their order. They further feel that even as candidates in general constituencies with the most liberal intentions towards their tenantry, they will be exposed to merciless and unscrupulous attacks of those who desire to fight them in the election by exploiting the passions and class prejudices of their tenantry. They are emphatically of opinion that resort to nomination to secure their proper place in the Legislature is a humiliating device, and that, further, there is no section of the Conference which will accept such a device.

Landholders, therefore, claim that they should be granted special representation through special constituencies in the same ratio to the total elected strength of the House as at present, in both the Provincial and Central Legislatures.

In anoher memorandum the question of Second Chambers and the claims of Landholders with reference to such chambers will be dealt with.

ANNEXURE 8.

I.

STATEMENT ON BEHALF OF THE SARDARS' AND INAMDARS' CENTRAL ASSOCIATION OF THE BOMBAY PRESIDENCY.

Circulated by the Raja of Bobbili.

18th October, 1931.

1. On behalf of the Sardars' and Inamdars' Central Association of the Bombay Presidency representing the landed aristocracy and gentry of the Bombay Presidency who are commonly styled as "Landholders," we have the honour to present their case to His Majesty's Government and to the members of the Indian Round Table Conference.

2. The class of the "Landholders" is composed of Sardars, Inamdars, Jahagirdars, Saranjamdars, Talukdars and Watandars, each of which tenure has some specialities peculiar to it. The term "Inamdar" is more or less generic and has been used so as to include all the various tenures.

3. The landed aristocracy of the Bombay Presidency is an important part of polity from times immemorial. It founded empires, led armies, and was principally responsible for the civil administration, army and defence. It formerly wielded and still wields a great influence in society. It is in no way inferior to any other class in respect of education and culture, and has not been slow to move with the changing times. This class has the special advantage of coming into direct contact with the villages, for the development of which no class is better fitted. In paragraph 147 of the Montagu-Chelmsford Report it is said—

> "The natural and acknowledged leaders in country areas are the landed aristocracy. They generally represent ancient and well-born families and their estates are often the result of conquest or grants from some mediæval monarch. By position, influence and education they are fitted to take a leading part in public affairs. Some of them are beginning to do so, and our aim must be to call many more of them out into the political lists."

This quotation is given to bring prominently to notice that the framers of the Report intended to lay down as a matter of policy that this class should be given proper facilities to play their part in the new order of things.

4. The interests of this class are extensive. In the Bombay Presidency proper (exclusive of Sind) this class holds 2,076¼ villages as alienated, the total number of villages being 20,834¼. The *net* revenue of the alienated villages and lands is Rs. 1,07,13,995, the land revenue of the Government villages being Rs. 4,30,15,007. Thus it can be roughly said that Sardars and Inamdars hold one-tenth of the number of Government villages, and hold one-fourth of its land-revenue.

5. The tenures, culture and political education of Sind being entirely distinct from that of the Presidency proper, our Association has restricted its activities to the aristocracy of the Presidency proper, and we are not going to offer any remarks about Sind and Sind Landholders.

6. Having described the interests of our class and their extent we proceed to trace the history of representation accorded to this class in the Legislature.

7. Since 1861, one person from our class was being nominated in the Bombay Legislative Council till the year 1892, when there was a change in the constitution of the Legislatures. Elective principle came in, and one seat was reserved to be elected by the Deccan Sardars only for the Bombay Council. The Order of Sardars of the Deccan is a creation of the Political Department of the Bombay Government, and the inclusion of any person in the list of Sardars depends exclusively on the sweet will of the Bombay Government. Thus the Inamdars, many of whom have interests much larger than those of many of the Sardars, remained unrepresented. The Order of the Sardars of Guzerath was created about the year 1908 and the Morley-Minto Reforms provided one more seat for them in the local council, the Inamdars who constitute the main bulk of the landed aristocracy remaining unenfranchised. Reforms of 1909 went further and the Landholders of the Bombay Presidency were given a seat in the Central Legislature, which was alternately shared by the landholders of Sind and Sardars of Guzerath, and landholders of Sind and the Sardars of the Deccan, the Inamdars being without votes.

8. The Sardars and Inamdars pressed their claims for special and adequate representation when the Rt. Hon. Mr. Montagu came to India in 1917, and waited upon him and His Excellency Lord Chelmsford in deputation. Our Association painfully notes that for no ostensible reason the Government of Bombay opposed the claim of Inamdars, and the Government of India saw no reason to interfere. Thereupon, our Association placed their case before the Joint Parliamentary Committee when it was formed, and being convinced of the justice of our cause, they reported that:—

> "The special representation of the Landholders in the Provinces should be reconsidered by the Government of India in consultation with the local Governments."

As a result of this, such Inamdars as *solely held a whole village as alienated* were included in the list of the voters for the seats for Sardars without increasing the number of seats for the Landholders.

9. We strongly complain that in spite of the expansion of the Bombay Council in 1892, in 1909, and in 1920 the Deccan Sardars and Inamdars are just in the same place as they were in 1861 when the Councils came into existence with respect to the number of their seats in it. However, we note that the claim of Inamdars for special representation at last found recognition at the hands of the Government.

10. We are not satisfied with this recognition merely. We claim *adequate representation*. Our claim for the greater number of seats does not rest merely on the extent of our interests. We are the only cultured class that come into direct contact with the village. and shall be of great use to the development of the country if proper facilities are afforded to us. The Montagu-Chelmford Report says, "The natural and asknowledged leaders in the country areas are the landed aristocracy", and they further observe in paragraph 148, "No men are better qualified to advise with understanding and great natural shrewdness on the great mass of rural questions which will come before the Provincial Legislatures".

11. Our class has a large stake in the country, and by tradition we are endowed with a sense of responsibility and appreciate the difficulties of administration. The management of our estates brings us into contact with almost every department of the Government, and the presence of this class in adequate numbers will serve as a healthy check on hasty and ill-considered legislation.

12. We have persons of all castes, creeds and religions in our class, which, combined with our culture and social position, keeps us above the narrow feelings of communalism. At a time when the evil of communalism is rampant, our presence in adequate numbers will serve as check to it.

13. Wider powers have to be given to the Legislatures to cope with the strong demand from the public for the same, and they should be so constituted as to progress on proper lines. We record it as our considered opinion that this can be best achieved by giving the special interests so much representation as would effectively influence the deliberations and decisions of the Legislatures. We have confidence that representatives of the special interests like Landholders, Commerce and University will be persons of balanced views, and their voting will be guided by reason and responsibility. As the popular Chamber will have real power and control over the purse, great care has to be taken of its constitution; we advocate the policy of *effective representation of the special interests in it.*

14. With due weight to these considerations and without exaggerating our claim in any way, we modestly ask for twelve seats in the Bombay Council, and three in the Assembly, and one in the Council of State, if it is to be retained.

Second Chamber for Provinces.

15. It is the considered opinion of this Association that a Second Chamber consisting of the representatives of important interests like the Landholders, Commerce, University, and men of experience is a necessity in the interests of the people of the Bombay Presidency during the initial period of the introduction of autonomy until the Legislatures are accustomed to use the new powers with which they will be invested, and the voters fully learn by experience the importance of the right to vote. After an experience of twenty years, the Provinces should decide whether the Second Chamber should be continued or done away with. Our Association unhesitatingly states that the Simon Commission have put the cart before the horse in recommending that the Provincial Legislature should be unicameral at the outset and should afterwards decide whether to establish a Second Chamber.

16. It may be pointed out that this Association had waited in deputation on His Excellency Lord Chelmsford and the Right Honourable Mr. Montagu in 1917, and had submitted a scheme for a Second Chamber even then.

17. This Association recommends that the Second Chamber should be so constituted as to be above any tinge of communalism which can be secured by an electorate with high franchise and without communal basis. We think that a Second Chamber so constituted will be an effective preventive to the evils of communalism in the Lower House.

Guarantees.

18. While advocating full autonomy for India. we make it clear that specific provisions be incorporated in the new constitution for respecting the pledges and solemn engagements made by the previous Governments, and by the British Government.

19. As observed in paragraph 147 of the Montagu-Chelmsford Report, "the estates of the Landholders are the result of conquests or grants from some mediæval monarch". In pre-British times many of the Ruling Princes and many of the "Landholders" stood practically on the same level. After the introduction of the British Government, "Landholders" having extensive territories were constituted into Ruling Princes by entering into Treaties with them. Such of the old magnates as did not then possess extensive estates were not invested with territorial powers and these now constitute the class styled as the "Landholders" of the Bombay Presidency. Solemn pledges were given and Sanads were issued to them on behalf of the Secretary of State for India as representing His Majesty's Government that their estates would be continued to them without any further increase in land tax or succession duty. Our Association urges that the Indian or Provincial Legislatures should not be given any power to impose any tax on Inams and Saranjams in contravention to the terms of the Sanads and pledges, nor should they have any power to

attach, abrogate or curtail an Inam or Saranjam in any way either directly or indirectly.

20. As stated above, the Landholders and the Ruling Princes stood on the same level in pre-British times, the only difference being the extent of their estates and their political importance. While it is unanimously agreed that Treaties made with the Princes shall be respected, our claim for statutory provision for respecting the Sanads and pledges given by His Majesty's Government is just, modest and reasonable.

21. In conclusion, we have the honour to request the Right Honourable the President and the Members of the Round Table Conference on behalf of our Association to give their favourable consideration to the statement and to our prayers.

A brief note on the aims and extent of the interest of the Landholders of the Bombay Presidency:—

The term "Landholders" includes only holders of alienated land, such as Talukdars, Sardars, Saranjamdars, Inamdars and Watandars, and not the holders of ordinary ryotwari lands. The tenures of such Landholders are of a special nature and have a special history. In several cases the grants of the Inams are from the Vijayanagar and still more ancient kings, in some from the Adilshahi and other dynasties, in others from later pre-British Governments. In several cases, *i.e.*, the Desais and Deshpandes, the watans have been existing time out of mind and have been continued by successive Governments. The grants were for distinguished military service and some other useful service both to the Government and the people. These Landholders took an active part in both the Civil and Military Government of the pre-British period and acted as a reliable link between the people and the Government. The British Government, too, has after a careful enquiry guaranteed to continue the Inams by the issue of express orders and Sanads which have the same sanctity as Treaties and engagements. One of the main conditions of the Sanad is that the Inam would be continued for ever without increase of land-tax, if any, imposed thereon. These Sanads form the basis of the agreement between the Inamdars and the Government, and ought to be, as they have been hitherto, scrupulously respected. In the early part of the British Government when everything was in an unsettled state, the watandars have been of immense help both to the Government and the people. It was the watandars who, till the advent of the British Government, maintained intact the self-contained and self-sufficient village administration. Their utility has been since greatly diminished owing to the enforced commutation of the service.

The bulk of their interests involved.—Out of a total of 22,905 villages in the Presidency proper, 2,372, *i.e.*, nearly 10 per cent. are Inam villages, and nearly 25 per cent. of the gross revenue of the Presidency proper is alienated.

All principal castes, including the Muslim and Depressed Classes in the country, are included in this class of Landholders.

Condition of loyalty imposed on the Sanads.—As the loyalty clause in the Sanad might be stretched to any length by the Executive Government, our class is always shy of putting forth a hard front even to support its own rights and privileges, for fear of losing the holding itself, with the result that their prestige both with the Government and the people is being slowly undermined. Landholders have all along been sincerely supporting all popular movements. Consistently with their relations with Government, they have been helping the popular cause as far as it lies in their power. They are for full Dominion Status and will try to attain it.

The only anxiety of these Landholders is that the legitimate rights and privileges enjoyed by them time out of mind from generation to generation should be continued in future; and whatever form the future Government will take, it should have no power to encroach on the rights secured by express orders and Sanads and time-honoured and well recognised practices. In the ordinary course they should have no fear in that respect.

But, unfortunately, we see latterly occasional signs of tenants being set up against Landlords, with the result of agrarian disputes tending to unsettle the established order of things. If nationalisation of all lands is to come after all, no one, not even the Landholders, can stop it. It is, however, extremely doubtful and a disputed point if such a course is desirable in the interests of the country at large. For the good of the country in general, it is submitted that the rights of property enjoyed for a considerable time should be respected. So some necessary safeguards ought to be introduced.

Special representation in Councils.—So long as seats are to be allotted on the basis of special interests, the Landholders too have a right to have special and adequate seats provided for them. The special nature of their tenures and their historic importance as representing ancient aristocratic families deserve to be taken into special consideration as distinguished from the holders of ordinary occupancy lands. Just as trade, industry, education, etc., are to be allotted special seats, so Landholders should also be given special and adequate representation both in the Provincial and Central Legislatures.

Second Chamber.—The Second Chamber, which is mainly brought into existence to assure stability and exert a steadying influence will avert precipitous legislation, which the present political atmosphere indicates. There is a real necessity for such Second Chambers both in the Provincial and Central Legislatures—at any rate in the present stage of development.

In conclusion we wish to quote with approval the apt remarks of Rajah Sir Vasudev, Rajah of Kollengode, a very rich Jenmi of Malabar and sometimes a Member of the Madras Governor's Executive Council. "In future the differences of communities and religions will not look so large in the business of legislation as the differences are based on economic status. Even in the last few years questions of land-tenure have taken up much of the attention of the Legislative Councils and it has been regrettable to notice that the tendency of the Councils has been to undermine the position of the Landholders in relation to tenants. With the large extension of the franchise that is now proposed this tendency is likely to be further emphasised in the future, and we, Landholders, cannot look equanimity to that future unless we are given sufficient safeguards, of which one must necessarily be separate and adequate representation in the future Council."

Copy of some of the resolutions passed by the third Conference of the Sardars, Inamdars and Talukdars of the Bombay Presidency, held at Dharwar on 30th and 31st May, 1931, under the Presidentship of Rao Bahadur Sardar M. V. Kibe.

Resolution No. 1.

(*a*) This conference records its keen disappointment and strong protest that no representative of the Bombay Sirdars and Inamdars' Class was invited to participate in the deliberations of the Round Table Conference in spite of the repeated requests from this class.

(*b*) This conference brings to the notice of Government once more the history, traditions, the vast extent and the special nature of the interests of this class in this Presidency, which, being entirely distinct from those of the Landholders in other Presidencies, makes it impossible for a representative of the Landholders in other parts to represent the views of this class, and requests Government to invite representatives of this class from this Presidency for the deliberations of the Round Table Conference.

(*c*) This conference notes with disappointment that the views of the Landholders of India in general, and of the Bombay Presidency in particular were not put forward before, nor did they receive proper consideration at the hands of the Round Table Conference, in spite of the fact that a special Committee for the minority interests was appointed by the Round Table Conference.

(*d*) This conference considers that unless the class of Sirdars and Inamdars which forms the greatest special interest of Bombay Presidency is adequately represented, the Round Table Conference cannot be said to be really representative.

Proposed by SARDAR V. N. MUTALIK.
Seconded by SARDAR G. N. MUJUMDAR, M.L.A.
Supported by MR. H. R. DESAI. M.L.C.
Supported by HON. SARDAR JAGANNATH MAHARAJ.
Supported by SARDAR S. A. SARDESAI, RAKASGI.

Resolution No. 2.

This conference urges the Government of India and the Government of Bombay to recommend to His Majesty's Government and the Round Table Conference and requests His Majesty's Government and the Round Table Conference to take steps to incorporate statutory guarantees in the new Government of India Act for undisturbed continuance of alienations without any diminution. This conference expressly points out that alienations are not liable to any interference or diminution.

Proposed by SHRI. NANASAHEB MUTALIK.
Seconded by SARDAR G. M. MUJUMDAR, M.L.A.

Resolution No. 3.

Having regard to the conditions in the Presidency the conference considers that a Second Chamber is a necessity for the Presidency.

Proposed by SARDAR DAJISAHEB PATWARDHAR.
Seconded by SHRI. NANASAHEB MUTALIK.

Resolution No. 4.

This conference disapproves of the policy of the Bombay Government regarding the forfeiture of properties held under Sanads without getting any decision of a Civil Court and recommends Government that the properties so forfeited without obtaining any decree should be restored.

Proposed by SHRI. L. M. DESHPANDE.
Seconded by SHRI. NANASAHEB MUTALIK.
Supported by
SHRI. JAIRAMDAS DESAI and P. K. SHIRALKAR.

Resolution No. 5.

In view of the policy as adumbrated in the Government of India Act, 1919, and in the recent speeches of the Prime Minister representing the British Government, this conference is of opinion that Sardars, Inamdars and Watandars, in their own interest as well as in the interests of the country should work actively to achieve full Dominion Status for India by all constitutional means.

Proposed by SHRI. L. M. DESHPANDE.
Seconded by SHRI. J. B. DESAI.
Supported by SHRI. GOPALRAE DESHPANDE.

Resolution No. 6.

This conference considers it necessary that the class should co-operate with all the leading political parties in India with a view to shape and help the future constitution and progress of the country and so self-guard its own interests.

Proposed by SHRI. G. R. JAHIGIRDAR.
Seconded by G. T. DESHPANDE.

Resolution No. 7.

. In view of the policy pursued even under former Governments and in view of the understanding arrived at the time of the Settlement of the Watandars of the District Hereditary Officers, this conference requests Government to follow a liberal policy in granting permission to adopt outsiders by levy of Nazrana where there are no persons in the Watan Family existing with a view to preserve ancient Watandar Families.

Proposed by SHRI. H. R. DESAI.
Seconded by SARDAR BABASAHEB BULLAPA DESAI.

ANNEXURE 9.

MEMORANDUM ON SECOND CHAMBERS IN PROVINCES.

By the Maharaja of Darbhanga and the Raja of Bobbili.

We desire that in the Provinces there should be established an Upper House or a Second Chamber which will function as most such Chambers do, as a revising authority in legislative matters. We do not desire to go into any details as to the functions of such Chambers and their relations with the Lower House. These matters could be adjusted once the principle of the establishment of Second Chambers is generally agreed upon.

At the last Session of the Round Table Conference, this question was considered by sub-Committee No. 11 (Provincial Constitution) and the recommendation of that sub-Committee was as follows:—

> "The existing Provincial Legislatures are unicameral. The sub-Committee recognise that conditions in some Provinces may make it desirable that the Provincial Legislatures should be bicameral, but the decision to incorporate a Second Chamber in the new constitution of any Province other than Bengal, the United Provinces and Bihar and Orissa where opinion in favour of a Second Chamber has already been expressed, should not be taken until opinion in the Province definitely favours this course."

Two questions which arise for consideration on a perusal of this recommendation are: Whether the Provinces mentioned therein are the only Provinces which have expressed in favour of Second Chambers, and whether the principle of obtaining the opinion of each Province on so fundamental an issue can be adopted. If it is considered that the course suggested by the Committee should be pursued, a further question of an ancillary nature, but by no means of secondary importance, arises, as to how and when provincial opinion should be obtained on the subject.

We are clearly of opinion that the establishment of Second Chambers is so fundamental an issue, not merely in regard to vested rights and interests, but to the proper working of the constitution, that we cannot contemplate with equanimity the differential treatment of Provinces in this behalf. The Provinces of India cannot be compared with the States of any of the well-known Federations. In Canada and Australia, the units making the Federation are comparatively small in area and population. In the United States the Federating units are in some instances not much larger than the biggest district of a Province. It has been possible, therefore, and even desirable in dealing with such small units of a federation to give a certain degree of latitude and not to enforce a uniform system of bicameral Legislature in all the Federating units.

The size and population of the provincial units of the Indian Federation afford the best argument against the proposal of the sub-Committee. The population in some of the provinces left out of consideration by the Committee varies from 20 millions to 45 millions. It is inconceivable that at the threshold of a new era of a great constitutional reform, the affairs of such vast

areas and populations should be left to the untrammelled control of a single Chamber. No expedient of a power of veto or other extraordinary powers vested in a governor will be in practice effective. The check for over-hasty or panicky legislation must be found from within and cannot either effectively, or for long, be imposed from without. We, therefore, strongly urge for the establishment of a bicameral system of Legislature in all the Provinces.

Indeed, it is hardly necessary to point out that the expedient of a Second Chamber is in fact a better method than the vesting of extraordinary powers in a Governor to secure the democratic character of the constitution. While in the initial stages of development such Second Chambers will necessarily play a considerable part in securing the careful and adequate consideration of all legislation, the growing experience of the Lower House would naturally tend to make the occasions of interference by a Second Chamber fewer and fewer. It is obvious, therefore, that while a governor's veto may be a dead wall arresting progress, the system of bicameral Legislature contains within itself elements which will make for the healthy and vigorous growth of democracy.

The Simon Commission in their Report first suggested the desirability of establishing Second Chambers only in some Provinces. The Government of India in their Despatch have followed up the suggestion and have limited the recommendation to those Provinces where Provincial Governments have agreed to the establishment of such Second Chambers. It would be unfair, however, both to the Provincial Governments concerned, and to the Government of India, to conclude from this recommendation that they are not in favour of Second Chambers. The fact cannot be overlooked—and this has a very great bearing on the consideration of the question at issue—that the various Provincial Governments in their Despatches were not contemplating the constitution which is now emerging from the deliberations of the Round Table Conference. The ideal of "a federation of all-India is still a distant ideal" according to the Government of India. They, no doubt, contemplated a sort of federation of Indian provinces, but even this was severely limited by various consideration arising out of the present system of unitary control. And in their Despatch the Government of India stated "We require a vigorous central authority capable of sustaining the heavy burdens that necessarily fall upon it . . . It should be in a position to mobilise the experience, talent, and resources of all India for the more efficient pursuit of such objects as agriculture, medical or economic research. It must also possess powers of intervention if developments in any Province are such as affect any other part of India, or the administration of any central subjects".

It is not unnatural that under such a scheme the constitution of bicameral Legislatures in the Provinces was not considered an urgent necessity, and the Government proposed to leave the question to be decided by Provinces. But, with the emergence of the idea of an all-India Federation; with the desire expressed by States of entering into such a federation, the position has entirely changed. One result of the acceptance of an all-India Federation as the immediate objective, has been an appreciation in the position of British India Provinces. These Provinces are no longer content to be in the subordinate position and under the leading strings of a Central Government, which they have hitherto been. In fact, the claim is put forward by British Indians that Provinces should practically be sovereign States not much inferior in status to Indian States in relation to the new Federal Government. The States themselves have made it clear that they will not tolerate any process of levelling down, but that the natural corollary of the acceptance of the idea of federation should be the levelling up of Indian Provinces to the status of Indian States.

It cannot, therefore, be denied that either directly on the formation of an all-India Federation, or very soon after, Indian Provinces will have greatly enhanced powers and will be comparatively free from contralised control, supervision or even advice. This process of levelling up

is bound to grow at an accelerated pace until the Provinces become sovereign units in the new federation. Is it then possible to take the same "indifferent" interest in the creation of bicameral legislatures in Provinces under such vastly changed circumstances and when these units have virtually full powers within their jurisdiction? There can only be one answer to the problem, that in the new constitution every Province must have a bicameral Legislature, the Upper House acting as a wholesome restraint always on the Lower House.

In supporting the proposal for a strong Second Chamber, at the Centre, in addition to the extraordinary powers vested in the Governor-General, the Government of India very cogently argue that though "the Governor-General will continue to be charged with the duty of securing those purposes which will be the concern of Parliament, it is desirable that, as far as possible, those powers should not be brought into play in opposition to the wishes of the Assembly, until the decisions of that body have been reviewed by the calmer judgment of the Council of State". It is obvious that this argument applies with equal force to the provincial administrations and to the powers proposed to be vested in provincial Governors.

Even with reference to those Provinces in which the Government of India do not immediately contemplate the establishment of a Second Chamber, they do not appear to be certain that a single Chamber will be always safe or effective. They state: "Future circumstances may create a demand for a Second Chamber. We accordingly accept the suggestion of the Government of Madras that the subject should be included among those matters on which after ten years a 'constitutional resolution' may be passed, and would apply the provision to all Provinces, leaving it open to a Provincial Council to recommend the creation of a Second Chamber, where none exists, or the abolition of one that has been set up. We do not take it as certain that no Provincial Council will pass a resolution to substitute for a unicameral, a bicameral system. We would suggest that a resolution dealing with the creation or abolition of a Second Chamber should require to be supported by not less than three-fourths of the votes of the Legislature instead of the proportion of two-thirds suggested by the Simon Commission for other matters.

This recommendation of the Government is so extraordinary that it requires some consideration. The optimism of the Government that they do not think it is certain that "no Provincial Council would recommend the creation of a Second Chamber" is as striking as it is ill-founded. It is difficult to find an example of a State with a single Chamber afterwards resolving to saddle itself with a Second Chamber, to revise or suspend the decisions of the first Chamber. History affords no such instance of self-abnegation on the part of a popularly elected Chamber. Further, when it is remembered that the Government of India seriously suggest that a three-fourths majority of the popularly elected Chamber should vote for the creation of a second Chamber which will check the vagaries of the first Chamber, the suggestion becomes fanciful. Is it conceivable under any circumstances in any country that three-fourths of the number of elected members of a popular House will have so little faith in their own wisdom and fair-mindedness as to suggest that their judgment should be revised by a Second Chamber?

The truth is that the Government of India have reversed the position and have therefore landed themselves in a sort of awkward blind alley. Their line of reasoning ought to have led them to recommend the constitution in each one of the Provinces of a bicameral Legislature. Power should then have been taken to alter the constitution at the end of ten years by a constitutional amendment adopted at a joint session of both Houses by a three-fourths majority. This is the only practical and constitutional method of working the newly enlarged provincial administrations. The need for a Second Chamber is greatest at the initial stages and not after a period of ten years, when popularly elected Chambers learn by experience to restrain their impetuosity and get accustomed to the use of power.

We therefore strongly urge the establishment of bicameral Legislatures in all Provinces, and we are prepared to consider the incorporation of a provision for a constitutional amendment such as outlined by the Government of India for the abolition of Second Chambers at the end of ten years.

In asking this much we feel we are doing nothing unreasonable, because once it is admitted—and it has been admitted by everyone without any reservation—that the consensus of public opinion is for the retention of residual powers in the Provinces, it logically follows that there should be created Second Chambers in the Provinces.

It may be asked why, among others, Landlords require a Second Chamber in the Provinces, when they have already demanded special representation in the popularly elected Chamber. The reason is obvious. Because the claim for special representation in the popular Chamber arises out of a desire on their part, not indeed to affect by their own vote the decisions of that House, but to have their case properly presented for consideration by the members of that body. The Landlords realise that they cannot have by special representation in the popularly elected Chamber such number of members as can in any way influence the actual voting on matters in which they are interested. Also, before a question comes up before the Second Chamber it is highly essential that every effort should be made for the Lower Chamber to appreciate the special point of view of Landlords. If that point of view is ignored or brushed aside by the Lower Chamber, then one real safeguard can only consist in the revising or suspensory powers of the Second Chamber. It must, moreover, be clearly realised that Second Chambers are claimed by, and are intended for, not merely Landlords, but other large interests as well.

In this connection it has to be specially explained that Second Chambers in the Provinces do not help the interests of the Landlords only. They serve to an equal extent all those special interests like the Universities, Labour, and Commerce. And thus the Second Chambers tend to ensure the rights and privileges of the important minorities. Again in this connection it has to be pointed out that the Madras Presidency, more than any other Province, richly deserves a Second Chamber, because the Madras Presidency contains the largest number of ancient and large Zamindars than any other Province.

There remains the minor question as to how, and when, if at all, provincial opinion should be obtained as to whether a Second Chamber is required in any Province. It is obvious that in the Provinces referred to in the Report of sub-Committee II such opinions have been obtained from the Legislatures constituted under the present Act. It would be grossly unfair if, with respect to other Provinces, this ascertainment of opinion should be postponed till councils are constituted under the new Act, when perhaps members would have been returned with a mandate to oppose the creation of Second Chambers. Parity of conditions require that the same procedure should be followed in all Provinces and that the existing Legislatures should be invited to express an opinion should it still be considered necessary to get such opinions.

In this connection, it has to be noted that the Madras Legislature has already expressed itself in favour of the creation of a Second Chamber. The Provincial Committee elected by the Council to co-operate with the Statutory Commission recommended in its Report that a Second Chamber was necessary for the Provinces. This Report was discussed and was adopted by the Madras Legislative Council in a resolution passed on the 12th of August 1929. It is, therefore, submitted that in any event Madras should be included in the Provinces for which a recommendation for the creation of Second Chambers has been adopted by the Provincial Constitution sub-Committee of the Conference.

We strongly urge, therefore, on our colleagues of the Round Table Conference the need for the establishment of Second Chambers in all Provinces. Without such a revising chamber, we are bound respectfully to point out that we do not feel that provincial administrations can run smoothly or efficiently.

November 23rd, 1931.

ANNEXURE 10.

MEMORANDUM REGARDING DEFENCE.

By Mr. B. V. Jadhav.

A sub-Committee of the Round Table Conference was constituted last year to consider questions of Defence, and they recommended:—

(*a*) "That immediate steps be taken to increase substantially the rate of Indianisation in the Indian Army to make it commensurate with the main object in view, having regard to all relevant considerations, such as the maintenance of the requisite standard of efficiency.

(*b*) That in order to give effect to (*a*) a training college in India be established at the earliest possible moment, in order to train candidates for commissions in all arms of the Indian Defence Services. This college would also train prospective officers of the Indian State forces. Indian cadets should, however, continue to be eligible for admission as at present to Sandhurst, Woolwich and Cranwell.

(*c*) That in order to avoid delay the Government of India be instructed to set up a committee of experts, both British and Indian (including representatives of the Indian States) to work out the details of the establishment of such a college."

The Government of India accordingly set up a committee under the Chairmanship of General Sir Philip Chetwode, the Commander-in-Chief of India, who submitted their Report to the Government of India.

Copies of this Report have been supplied to the members of the Round Table Conference.

I beg to submit that it is very desirable to convene a meeting of the Defence Committee of the Round Table Conference to consider the recommendations made by the Expert Committee and thus afford the members of the Defence Committee to place their views before the Round Table Conference. But if the Government do not see the necessity of calling a meeting I take this opportunity of placing my views before the members of the Conference with a hope that the authorities here and in India will give due consideration to them.

The proceedings of the Committee of Experts were opened at Simla on the 25th of May, when the Chairman, the Commander-in-Chief, informed the Committee of the Government's proposals for an immediate extension of the field of Indianisation in the Army to a force equivalent to a complete division of all arms and a cavalry brigade, with proportionate provision for ancillary services, staff, etc. These proposals involve an output of about "60 Indian King's Commissioned Officers a year". The Committee's task was stated to be "to draw up a scheme for a military college capable of producing this output".

I must state here that I am among those who do not approve of this method of Indianisation by dividing the Indian Army into two groups, Indianised and un-Indianised. I think that Indianisation should proceed from the bottom in all the units of the Indian Army.

In paragraph 14 of the Report reference is made to a decision of the Government "gradually to reorganise the officer establishments of Indianising units on the British pattern, consisting of 28 commissioned officers in a battalion, as compared with the existing establishments of 12 King's Commissioned and 18 or 19 Viceroy's Commissioned Officers. This decision involves the eventual elimination of the Viceroy's Commissioned Officer, no less than the British officer, from Indianising units".

I have to raise a voice of protest against this decision of the Government of India which they took three years ago and managed to keep it as a secret. It was casually alluded to in the speeches by the Commander-in-Chief and the Secretary, Military Department, in the two Houses of the Indian Legislature. But the words used were so cleverly enigmatic that none of

the non-official members were able to realise their full implications. The decision of the Government of India thus remained a close secret.

The rank and file of the unfortunate division condemned to Indianisation under the scheme have no idea what is in store for them. Their chances of promotion for efficiency and meritorious service are completely blocked. They will not get any promotion as Viceroy's Commissioned Officers like their brethren in the un-Indianised divisions. The prospects of promotion in the two units will thus be vastly different and this fact when known will certainly have a bad effect on the recruitment and morale of the Indianised division.

The advent of the Indian officers who will replace the British officers will at the same time stop the promotions of the rank and file and the latter are bound to look upon them as inimical to their interests. A feeling of hatred is likely to be engendered against them and it is feared that discipline will materially suffer. If the fears are realised the Indian officers will be exposed to the charge of incompetence and this may ultimately lead to the condemnation of Indianisation.

The Civil Service and officers of the civil side of Government are treated with great consideration. Whenever any new change is introduced care is taken to see that it does not prejudice the interests of those who were enlisted before the introduction of the change. They are given an opportunity to place their case, compensation is provided for any loss that may be fall them and everything is done so that there should be no discontent. The most glaring instance of this policy that occurs to me is the sudden increase in the number of Executive Councillors in Bengal, Bombay and Madras in 1921. Up to that year the work was done by three Executive Councillors of whom one was an Indian. Civil Servants had in prospect two Executive Councillorships and care was taken that their prospects should not suffer. So although half the work was transferred to the newly appointed Ministers and there was not sufficient work for two Executive Councillors their number was raised to four so that under the provisions of the Government of India Act the number of Executive Councillorships open to the Indian Civil Service should remain at two as before. This has entailed unnecessary heavy expenditure and at the same time made the administration top heavy. But it was looked upon as justifiable to keep the service contented.

But in the Indian Army, Government has decided to do great injustice to the rank and file of the Indianised division only. I am not aware of any compensation that is intended for them.

I submit that this step is sure to affect recruitment and discipline in the unit selected. The Government of India have exposed themselves to the charge of breaking their promise to the privates and non-commissioned officers already in service. They joined with prospects of getting Viceroy's commissions in due course if found fit and under the new scheme their advancement is wholly blocked. The distinction between the Indianised and un-Indianised divisions is invidious. The latter have every chance of promotion, the former have none and this for no fault of theirs.

Another objection to this decision is that it adds unnecessarily to the cost without in any way increasing efficiency. Sixteen King's Commissioned Officers in each battalion are to replace 18 or 19 Viceroy's Commissioned Officers. The cost will increase nearly fourfold in salaries alone. The leave allowances, travelling expenses and other charges will also increase the cost.

The Viceroy's Commissioned Officers have done very good service and no officer of note has ever branded them as inefficient. The change is not called for and I submit that the Government of India should consider its decision.

The strongest objection from my point of view is that the change will materially retard the rate of Indianisation. If every battalion is to absorb 28 officers instead of 12 as at present, it is clear that if Indianisation under the old scheme would have taken (n) years, under the new scheme as put forth in the Government of India's decision Indianisation will surely take ($\frac{12}{28}n$) years.

The minutes of dissent have put forth other objections which I think are worth considering.

The Defence sub-Committee of the Round Table Conference recommended that Indian Cadets should be eligible for admission to Sandhurst, Woolwich and Cranwell. The Committee in their majority report have rejected the recommendation. I am of opinion that the Chetwode (Expert) Committee had no right to revise the decisions of the Round Table Conference. I am in general agreement with the arguments that have been advanced in the dissenting minutes on this point.

I strongly urge that the college should be opened as early as possible and not later than November, 1932.

16th November, 1931.

ANNEXURE 11.

THE PROBLEM OF THE ARMY IN INDIA.

By Diwan Bahadur M. Ramachandra Rao.

1. The discussions in the Federal Structure sub-Committee on the Army question were mainly directed to the constitutional problem in relation to the defence of India. While I am in general agreement with the scheme proposed by Sir Tej Bahadur Sapru and others during the discussions in the sub-Committee in regard to the future control of military policy and administration during the period of transition, I am of opinion that several questions relating to the size, functions and organisation of the Army in India have not received yet adequate attention from the sub-Committee or of the Conference as a whole. The meetings of the Defence sub-Committee were held during the closing days of the Conference in January last with very restricted terms of reference, and the general conclusions reached in that Committee did not cover the whole ground of the problem of the defence of India in all its aspects. The Prime Minister's declaration on the 19th January last has made it clear that the responsibility for the affairs of India is to be placed on Indian shoulders. Whatever be the measure of constitutional advance that may result from the labours of this Conference, a self-governing India must be eventually in a position to provide itself with armed forces commanded by Indians and fit to undertake the defence of the country. The only position compatible with responsible self-government in India similar to that prevailing in the Dominions, is an Army officered and controlled by Indian officers and responsible to a Federal Government in India. This aspect of the question was fully recognised by the Defence sub-Committee of this Conference in its Resolution No. 1, which was to the effect that "the sub-Committee consider that with the development of the new political structure in India, the defence of India must, to an increasing extent, be the concern of the Indian people, and not of the British Government alone". In order to give practical effect to this principle, they recognised "the great importance attached by Indian Courts to the reduction in the number of British troops in India to the lowest possible figure," and recommended that the question should form the subject of early expert investigation. They also recommended that immediate steps should be taken to "increase substantially the rate of Indianisation in the Indian Army, to make it commensurate with the main object in view, having regard to all relevant considerations, such as the maintenance of the requisite standard of efficiency". They agreed that a training college in India should be established at the earliest possible moment, and suggested the appointment of a committee of experts to work out the details of the establishment of such a college.

2. It was generally expected that the Reports of the two Committees suggested by the Defence sub-Committee would be ready and be made available to the members of the Conference during the present Session. In regard

to the early expert investigation concerning the reduction of British troops in India, suggested by the Defence sub-Committee, it is understood that the Government of India have, in consultation with the Secretary of State for India, appointed in May last a committee of military experts to go into the question, but its composition and terms of reference are not known. It is believed, however, that the Committee is wholly composed of military officers. It was expected that when this Conference resumed its labours during the current session, the Report of this Committee would be placed before the Conference. In answer to an inquiry by me, I was, however, informed that the expert investigation which was started early in December was still proceeding, and that the India Office has stated that "it is too early as yet to say at what stage the results of this Committee will be available". It is clear, therefore, that during the present sittings of the Conference, this report will not be made available, and it is not known whether this report will be published. It is unfortunate that so representative a gathering as this Conference should terminate its proceedings without expressing its considered views on the vital problem of the defence of India, with special reference to the reduction of the British garrison, in the light of the expert investigation suggested by the Defence Committee.

Strength of the British Troops in India.

3. For several years Indian political opinion has expressed itself in no uncertain terms on the subject of the reduction of British troops in India, both on political grounds and also as a measure of economy. It is unnecessary now to dwell on either aspect of the question at any length. The arguments are well known to every member of this Conference and have been elaborated almost every year in the Indian Legislative Assembly and also at the annual meetings of all important political organisations in India.

4. On the eve of the Indian Mutiny, the Indian troops in India outnumbered the British by eight to one. The total strength of the European troops serving in India about the year 1857 was 6,170 European officers. 38,502 non-commissioned officers, rank and file, and 465 European veterans, making a total of 45,107. Before the mutiny campaigns were over, the British Garrison in India was raised to over 70,000 men and the Army Commissions which sat since the Mutiny, laid down fixed proportions of British to Indian troops, which were accepted as matters of high policy. In consequence of this, these proportions were only slightly varied, and the strength of the British Army in India, as determined almost immediately after the Mutiny, has been maintained more or less at the same level. In 1885, on account of the supposed danger of a Russian invasion, 10,000 British and 20,000 Indian soldiers were added to the Army, and the total strength of the Army in India, as it stood in 1887-88 was 74,000 British and 145,000 Indian soldiers. The actual strength of combatant troops of the Army in India in 1903 was 77,075 British and 142,087 Indian ranks. During the Great War, there was a great expansion of the Indian ranks, but on 1st September, 1923, the strength of the British Army in India was 15,924, and the Indian Army was 124,507. Corresponding figures on the 1st April, 1931, are 58,558 and 132,977. It will be seen from the above summary that the proportion of the British to Indian troops before the Government of India was taken over by the Crown was 1 to 8, and after that event this proportion was generally 1 to 2. In 1879, the Peel Commission fixed this proportion at 1 to 2 for the Bengal Army, and 1 to 3 for the Madras and Bombay Armies. This was subsequently changed to the general ratio of 1 to 2·5, and the ratio is practically the same at the present day.

The Purpose of the Army in India.

5. Various reasons have been assigned from time to time for the maintenance of this large British Garrison in India, and I should not have referred to these reasons but for the "assurances" said to have been given to the Indian Statutory Commission on this matter. The Statutory Com-

mission say that " they have been assured the Army is not artificially enlarged with a view to making some portions of it available for service elsewhere or for the purpose of keeping on Indian soil a reserve not needed in India, at the expense of the Indian taxpayer. Its strength is not more than is calculated to be necessary for meeting the emergencies of internal disorder and the possibilties of external attack ". (Page 172, Vol. II.) The Report does not state the persons and authorities who had given these assurances. These assurances are opposed to the statements made by responsible authorities from time to time, to which it is necessary to invite attention. Though it was laid down by one of the Commissions that the purpose of the Army in India was " to prevent and repel foreign aggression, to prevent armed rebellion within British India and to overawe the armies of feudatory native States ", the military policy of Great Britain was not solely dictated to meet the actual requirements for the purpose of internal and external security of India. The whole subject of the organisation of the Army in India was reviewed by the Peel Commission in 1858 and by the Eden Commission in 1879. The recommendations of these bodies linked up India with the general scheme of Imperial Defence of the British Empire, and the Indian Army as now constituted is not confined to meeting the legitimate domestic requirements of India, but is also intended to meet the requirements of British Imperial policy. These facts cannot be denied.

The Marquis of Lansdowne.

6. The late Marquis of Landsdowne, who was Secretary of State for War at the time of the Welby Commission, stated in his evidence that if India were isolated from the United Kingdom, it would be certainly not necessary to maintain a force such as is borrowed from the United Kingdom, and in the same degree of efficiency. He said that the Indian Army was organised with a view to the possibility of its employment upon operations which have nothing to do either with the internal policy of the country, or with the mere repression of tribal disorders upon the frontier. In his answers to further questions, His Lordship remarked that the present system was really in a great measure contrived to serve the two-fold requirements of Britain on the one hand and India on the other, and that millions of money had been spent on increasing the Army in India to provide for the security of India, not against domestic enemies or to prevent the incursions of the war-like peoples of adjoining countries, but to maintain the supremacy of the British power in the East.

Lord Curzon.

7. In his introduction to *The Indian Corps in France*, another Viceroy, Lord Curzon, observed that " The Indian Army in fact has always possessed and has been proud of possessing a triple function; the preservation of internal peace in India itself; the defence of the Indian frontiers; and preparedness to embark at a moment's notice for Imperial service in other parts of the globe. In this third aspect, India has for long been one of the most important units in the scheme of British Imperial Defence, providing the British Government with a striking force always ready, of admirable efficiency and assured valour ". Attention is also invited to the Report of the Esher Committee on the Army in India, who stated that the Committee could not consider the administration of the Army in India otherwise than as part of the total armed forces of the Empire. The Committee were requested in considering their recommendations to avoid, if possible, framing them in such a manner as might hereafter prove inconsistent with the gradual approach of India towards Dominion status. But the Committee stated that for the purpose of the Report they accepted the relations of India to Great Britain and to the Empire as they stood on the date of the Report in November, 1919. It is unnecessary to refer in detail to these recommendations, but the point is that while the

armies of self-governing dominions are organised and maintained to meet their own requirements, the Indian Army is part of the British Imperial system and the Esher Committee proceeded to make their recommendations on this basis. In the first session in 1921 the Indian Legislative Assembly emphatically repudiated the assumptions underlying the Report of the Esher Committee that the Army in India could not be considered otherwise than as part of the armed forces of the Empire, and that the military resources of India should be developed in a manner suited to Imperial necessities.

Mr. MacDonald.

8. Finally, I might also refer to the observations made by the present Prime Minister, Mr. MacDonald, in his book on the Government of India. He says: "What is the proper charge for India to bear for this occupation? A large part of the army in India—*certainly one-half*—is an Imperial Army which we require for other than purely Indian purposes, and its cost, therefore, should be met from Imperial and not Indian funds. When we stationed troops in other parts of the Empire, we did not charge them upon the Colonies, but in India we have the influence of the dead hand. . . A self-governing India would no doubt insist upon bearing some definite share in defence, but like the Dominions it would settle how much it ought to bear: it would adjust the cost to its means, and it would decide in what form it was to make its contribution—*perhaps an Indian recruited army.* In any event, the present plan, by which India pays for the Imperial army stationed there, without in any way determining policy, is as bad as it can be. If the existing system of military defence is to last, the whole cost of the British army stationed in India should be borne by the Imperial Exchequer."

I have referred to the statements of these high authorities, as it was also suggested at a recent conference held at the India Office that the Army in India at the present time is organised and maintained solely for the defence of India. This is not a fact. On the face of the admissions referred to above, it is clear that the British Garrison in India is maintained at least partly for carrying out British policy in the East.

Indianisation of the Indian Army.

9. I shall now refer to the scheme of Indianisation of the officers' ranks of the Indian Army. During the discussions of the Defence sub-Committee, it was strongly urged by several members that, subject to the requirements of efficiency and the availability of suitable candidates as officers, some definite indication should be given as to the rate of Indianisation or that some period should be fixed within which the Indianisation should be completed. The majority of the members considered it impossible, for practical reasons, to lay down any definite rate of Indianisation, and recommended that immediate steps should be taken to increase *substantially* the rate of Indianisation in the Indian Army to make it commensurate with the main object in view, *viz.*, the increase of the responsibility of the people of India for the defence of their country. It is a legitimate inference from the proceedings and resolutions of the Defence sub-Committee that the principles as to the pace and method of Indianisation would be discussed by the Committee appointed under resolution 2 (*c*) of the Defence sub-Committee, which was directed to take into consideration the reports of all the committees hitherto appointed in regard to this matter. Nevertheless, the Government of India, in contravention of the intentions of the members of the Defence sub-Committee, decided the question relating to the pace of Indianisation. The Commander-in-Chief in India, who presided over the deliberations of the Indian Military College Committee, gave a ruling that the question of what should be regarded as a substantial increase in the rate of Indianisation commensurate with the main object of resolution No. 1 of the Defence sub-Committee was not within the competence of the Committee. The work of the Military College Committee was, therefore, practically restricted to a consideration of the educational and financial details relating to the establishment of the college.

The question of the pace of Indianisation has not, therefore, been hitherto discussed either in the Defence sub-Committee or at this Conference or by the Indian Military College Committee set up in accordance with the resolutions of this Conference. This question should not be left wholly to the Government of India or the Secretary of State, and I venture to think that this Conference should express its views definitely on the subject of the pace and method of Indianisation.

New Orientation of Military Organisation.

Moreover, in view of the political status of India now foreshadowed in the Prime Minister's declaration, a new orientation of the policy of military organisation in India is absolutely necessary.

10. In this connection I should like to invite the attention of this Conference to the able and exhaustive dissenting minute of Sir P. S. Sivaswamy Aiyer, K.C.S.I., C.I.E., and of Major-General Raja Ganpat Rao Raghunath Rajwade, C.B.E., appended to the Report of the Indian Military College Committee, 1931, and to the various topics dealt with in that Report. They have given considerable attention for years to the whole subject of military organisation in India and their views are entitled to very careful consideration at this Conference. They observe that "till the inauguration of the Montague-Chelmsford reforms, the authorities gave no thought to the question of defence from a national point of view. The Esher Committee on the organisation of the army in India paid no attention to the national aspect of the question. The only committee which at all approached the problem from the national point of view was the Auxiliary and Territorial Forces Committee presided over by Sir John Shea. But it dealt only with the organisation of the non-regular forces and its recommendations have not been carried out except in the most half-hearted manner. The appointment of a committee to examine the military organisation of India from a national point of view is one of the most urgent measures to be undertaken by a responsible, or even a semi-responsible Government of India. Such a committee must be charged with the duty of devising measures for uplifting the martial capacity of all Provinces creating a national army imbued with a sense of patriotism and responsibility for the defence of the motherland, and preventing the domination of one area by another or of the civil population by the soldiery. Public opinion will refuse to accept the dilemma posed by the Simon Commission that for the purpose of defence India must remain for generations either under the heel of Britain or under the heel of the enlisted classes."

Main Features of the Scheme.

11. The three main features of the scheme of Indianisation which has been put forward by His Excellency the Commander-in-Chief, and accepted by the majority of the members of the Indian Military College Committee are:—

(1) The annual output of cadets from the College should be about sixty in number, and that the Indian King's commissioned officers should be posted only to the units selected for Indianisation.

(2) That the units should be organised on the pattern of the British Army and that the Viceroy's commissioned officers should be eliminated.

(3) That the pace of Indianisation of the officers' ranks should be limited for the present to the output of the proposed College.

In regard to the first point, the present proposal is to continue the eight units scheme and to extend it to the whole fighting formation. This scheme was universally condemned by all the Commanding Officers of the Indianised units, by the Indian cadets, and by almost every witness that appeared before the Indian Sandhurst Committee presided over by Sir John Shea. Among the military men of the highest rank who condemned the scheme may be mentioned Lieut.-General Sir John Shea, Adjutant-General in India, who stated that, from his own point of view, as an officer responsible for provid--

ing efficient personnel to the army, he would far sooner see in the intermediate stage Indian cadets mixed throughout the Indian units with British officers, and he expressed the opinion "that we shall have a far more efficient army if a mixture of Indian and British boys in the same unit is permitted than by totally Indianising certain units." After a review of the whole evidence, the Sandhurst Committee came to the conclusion that "both for psychological and practical reasons, the continuance of the scheme can, in their opinion, only conduce to failure." They said: "With Indianisation proceeding in the army in any measure, the only means of ensuring successful Indianisation and, concomitantly, the maximum degree attainable of military efficiency, is to allow Indian Officers to serve shoulder to shoulder with British Officers, each learning from the other in every unit of the Indian Army. This was the original plan and, as we believe, the correct one. There is one other practical consideration to which we attach importance. The Indian King's commissioned officer is still a new element in the Indian Army to which that most conservative body of men, the Indian rank and file, have not yet become fully accustomed. By the method which we advocate, this new element can be absorbed with the least degree of questioning and the least derangement of the existing system of the Indian Army taken as a whole." Notwithstanding this weighty opinion of the Committee based upon most important evidence, the decision to continue the eight units scheme was a serious blow to all chances of successful Indianisation. It cannot be a matter of surprise if uncharitable people draw the inference that those responsible for this decision did not want to give the Indian cadets all fair chances of success. The present proposal is to extend the scheme to 16 units, that is, to one whole fighting formation. This step has been taken by the Government of India and the Secretary of State, notwithstanding the criticisms raised against the eight units scheme during the last six or seven years.

Elimination of Viceroy's Commissioned Officers.

12. In regard to the elimination of the Viceroy's commissioned officers and the reorganisation of the Indianised units on the pattern of the British Army, I would again invite the attention of the Conference to the observations made by Major-General Raja Ganpat Rao Raghunath Rajwade, C.B.E., and Sir P. S. Sivaswamy Aiyer, K.C.S.I., C.I.E. They say: "The present organisation of the Indian Army has existed for a long time and there has been no complaint that it was defective or inefficient. On the other hand, it has been repeatedly acknowledged that the Viceroy's commissioned officer is the backbone of the army, just as the permanent non-commissioned officers in the British Army, who come midway between the King's commissioned officer and the men in the ranks, are said to form a wonderful body. It lies upon those who wish to introduce a radical change in the *status quo* to make out a strong case in favour of the change. The mere fact that the British Army is organised on a different basis is not a sufficient reason for departure from the existing organisation. There is no reason to assume that the British pattern is a model of perfection and should be slavishly imitated elsewhere. Even supposing that the existence of an intermediate link between the King's commissioned officer and the rank is unnecessary it would furnish no argument for a change, unless it could be shown that the existing system has produced any evil results." The organisation of the army in every country is adapted to its own necessities and requirements, and there is no reason for the adoption of the pattern of any other country without regard to its own administrative necessities and other conditions. Moreover, the Indian Military College Committee have never considered the financial aspect of their proposals. The substitution of the Viceroy's commissioned officers by the King's commissioned officers will add enormously to the cost of the maintenance of the army in India. Under any circumstances this matter does not seem to be a problem for immediate consideration. I venture to draw the attention of the members of the Conference to the arguments on both sides which have been fully set out in the dissenting minute above referred to.

There is no doubt that it will indefinitely prolong the period taken to completely Indianise the officers' ranks of the division of the brigade selected for the purpose, not to speak of the Indianisation of the whole army. This is one of those questions in which a decision might be left to the future Government of India, after all the Indian units have been completely Indianised on the present basis. "The zeal for imitation of the British pattern is liable to be ascribed, and not without a show of reason, to the sinister object of retarding the process of Indianisation as much as possible and not to the love of ideal perfection." The argument that the interests and prospects of the Viceroy's commissioned officers form a valuable element in the army may be conceded at once. There can be no objection that in the case of the exceptional few men in the ranks who may possess sufficient ability and education, they may be given opportunity of securing appointment to King's commission to the Military College. The Sandhurst Committee presided over by Sir Andrew Skeen made ample provision for meeting the claim of the Viceroy's commissioned officers to King's commission. It is obvious that the abolition of the class of Viceroy's commissioned officers would remove all prospects of promotion from other ranks, and would have a very detrimental effect upon recruitment of the other ranks. The proposal, if accepted, will retard the Indianisation of the officers' ranks, and attention is invited to the views expressed in the Dissenting Minute above referred to.

Pace of Indianisation.

13. In regard to the third important feature, namely, the pace of Indianisation, it has been pointed out in the Defence sub-Committee that if British recruitment is stopped from to-day it would take thirty-five years from the date of stoppage for the disappearance of the last British officer from the Indian Army. The Indianisation of one division and one brigade now proposed is not a substantial increase in the rate of Indianisation, as contemplated by the Defence sub-Committee. In coming to a conclusion upon this question reference may be made to the proposals of the Government of India in 1922. The period suggested by the Skeen Committee was forty-two years, but the revised programme accepted by the Government of India reduced the period to thirty years, which again was subsequently reduced to twenty-eight years. The scheme now proposed is so indefinite that it is impossible to say what length of time would be required to Indianise the whole army, making all the necessary assumptions as regards the availability of the candidates. His Excellency no doubt stated at the Indian Military College Committee that his proposals were not of a static or rigid character, and that after a period of fourteen years, commencing from 1924, it would be possible to form a definite opinion as to the success of the experiment, and that it may not be necessary to wait for a further period of seven years before deciding to carry the experiment further. These statements are not assuring.

Competition and Nomination.

14. The last point that I should like to refer to is the proportion of vacancies to be filled by competition and nomination. The Indian Military College Committee have, by a majority, recommended that fifty per cent. of the vacancies should be set apart for recruitment from the Viceroy's commissioned officers. In every country a certain number of commissions are given to men from the ranks and the number of such commissions is limited, and the proportion of vacancies filled up by nomination to those filled by competition is very small. The importance of general education among the qualifications of officers is now more and more recognised. The arguments against the present scheme are fully set out in the dissenting minute above referred to, and I am in entire agreement with the dissenting members that to admit such a large proportion of the Viceroy's commissioned officers to King's commissions would be to court the failure of the whole scheme. The admission of officers who are below the general educational qualifications

required would seriously interfere with the success of Indianisation. I am therefore of opinion that the whole scheme put forward by His Excellency the Commander-in-Chief and embodied in the Report of the Indian Military College Committee requires reconsideration.

In conclusion, India demands a change in the present policy of concentrating the defensive forces of the country in the hands of the British, and to transfer the burden as rapidly as possible, consistently with efficiency, to Indian shoulders. In view of the Prime Minister's declaration last year, this policy will be altogether indefensible. Our inability to defend ourselves is often cast in our teeth as a serious impediment to the attainment of the status of a fully self-governing Dominion, though the past policy of Great Britain is the main cause of this impediment. The formulation of a new military policy *vis-à-vis* the people of the country and the transfer of the defence of the country to their shoulders is a necessary concomitant of the new status of India referred to in the declaration of the Prime Minister. The sincerity of Great Britain to constitute India into a self-governing Dominion will be tested by the adequacy or otherwise of steps taken for transferring to Indian shoulders as rapidly as possible the defence of India.

ANNEXURE 12.

MEMORANDUM ON THE QUESTION OF SAFEGUARDING BRITISH COMMERCIAL RIGHTS.

By Dr. Narendra Nath Law, M.A., Ph.D.

I.

Need for Re-examining Clause 14.

In this Memorandum I propose to have the question of the safeguarding of British trading rights reconsidered and the implications of Clause 14 of the Report of the Minorities sub-Committee, as amended by the whole Conference at their meeting on the 19th January, 1931, taken up for fresh examination. For reasons stated hereafter it is now imperative to reconsider the issues involved in the question. I need hardly emphasise that the deliberations of the last Session of the Conference on this problem of vital importance were not considered as conclusive in their bearing on the same.

Prime Minister's Declaration.

Furthermore, the suggestion for a reconsideration of the question is supported by the declaration, made by the Prime Minister on behalf of His Majesty's Government while adjourning the last Session of the Conference, that the conclusions arrived at were all subject to review in the light of their reactions on the public mind both of India and of Great Britain. And then the view that the deliberations of the last Conference on the particular subject were of a provisional character is also borne out by the fact that very little time could be spared at the last Session either in the sub-Committee or the Committee of the Whole Conference for the discussion of this particular subject. In fact in the sub-Committee it was scarcely discussed at all. The point was specifically "urged" by Sir Hubert Carr, and Lord Reading thought that the clause ought not to be put in as "agreed". That was on the 16th January, the same day on which the Committee of the Whole Conference sat to consider the Report of the Minorities sub-Committee. In the interval, however, the clause as passed by the sub-Committee was re-drafted at an informal conference consisting of Sir Hubert Carr, Mr. Chintamani and a few others and the new draft as an amendment of the original came up for discussion before the Committee of the Whole Conference.

Hasty Proceedings in the sub-Committee and the Committee of the Whole Conference.

The whole thing was done in a hurry and the members of the Conference had practically no time to study the implications of the amended draft. Mr. Mody, in his speech on the proposed amendment, introduced an important qualification which was supported by me. Mr. Jayakar, also in the same Committee, voiced the general feeling when he complained that he had not had the time nor the opportunity of considering in detail the wording of the clause. Lord Reading pointed out that the phraseology had been changed only " within the last few moments." Sir Hubert Carr also referred to the " amazing hurry " with which the alteration was to going to be made. Ultimately the Committee of the Whole Conference allowed some of the members to discuss the matter informally and come to an agreement. Without referring now to the substance of the speeches made when the Committee reassembled, it is sufficient to stress the point that though there was a great hurry to arrive at an " agreement," no real agreement as a matter of fact could be reached. When the Committee of the Whole Conference met, however, on the 19th January which, be it remembered, was the last day of the plenary Conference, it was announced, that an agreement had been reached and the amended draft was noted.

The point that I want to make from the above references to the proceedings is that not only should Clause 14 as amended be considered as a provisional agreement subject to review and reconsideration, but that the agreement reached was more or less unreal on account of the haste with which the proceedings were concluded. While the spirit of public service which must have animated Lord Reading and his colleagues when they met on the intervening Saturday to explore all means to arrive at an agreed conclusion must be deeply appreciated, I regret here to record and to bring home to members of the Conference the fact that the necessity of arriving at an agreement was allowed to overshadow the great importance of the principle involved in the clause. The period of eight months which have elapsed since the Conference finally adjourned on the 19th January last has given every one of us sufficient time and opportunity to re-examine that clause with that patience and scrutiny which it so fully deserves and to consult responsible opinion on the subject.

Vagueness in the Wording of the Clause.

The discussions which have been provoked by the amended clause have revealed that the succinct form finally assumed by it has imparted a sort of vagueness to the clause impelling critics to misconstrue it according to their own predilections. For instance, the European commercial community in India has interpreted the clause in an extremely conservative manner because to all intents and purposes they seek to emphasise that the provisions of the clause should make it impossible for the future Government of India to exercise any right of discrimination against the prevailing commercial rights of the British traders and industrialists in India. The persistence with which such views have been stressed has greatly stirred the Nationalist opinion in India and the feeling of uncertainty which has developed as a consequence justly demands that the clause should be purged of all ambiguities by the necessary elaboration. Personally speaking, it has been my conviction that the clause does not bear any interpretation calculated not to allow the Government of India any powers of discrimination in utter disregard of the necessities involved. In addressing a meeting of the Bengal National Chamber of Commerce in May last, I dwelt at length on this clause to explain that the clause was sufficiently elastic to allow the necessary degree of control in the interest of national economy. It is on this presumption alone that the clause seemed to have won the general support of the members of the Conference. The extreme view taken by the European commercial community could hardly be countenanced by the clause, as in that case the logical consequence of the acceptance of the clause would be not only to put a clog

on the economic advancement of India but also to impose an irredeemable mortgage on the commercial interests of the country which in effect would render all improvement of political status envisaged by the Conference completely nugatory. It is a significant fact that may be noted in this connection that even the liberal interpretation put upon the clause by me failed to satisfy the members of the Chamber. In fact, there is a widespread discontent among the public in India against the clause.

The brevity of the clause is a striking feature of the agreement, and I recognise that without it the agreement might, perhaps, not have been reached at all. While agreement on the subject-matter of this clause is essential and indispensable, the interests of the nation and of the British commercial community alike cannot be allowed to be mystified by interested interpretations which alike claiming support from the clause have made the latter a fruitful source of controversy and acrimony.

Indian Opposition and Claim.

Regarding the manner in which the implications of the clause should be amplified to place them beyond all doubts, Indian opinion is emphatic in suggesting that in any case these should convey a definite assurance of being designed primarily in the interest of India. I recognise that the best safeguard for commercial prosperity is good will and I am glad to find that Sir Hubert Carr recognises this also. But there must be an active manifestation of good will in order that there might be a real settlement, and this is an important obligation imposed not only on the British commercial community but also on those who represent the interests of India. It is necessary for us to assure the British trading interests in India that there is absolutely no fear of the spoilation of their just and fairly earned interests in India. We recognise the part they have played in the development of the country's trade and commerce and in the growth of her resources. If, however, for advancing the economic interests of the country, the future Government of India be constrained to extend certain privileges to national concerns alone to the exclusion of others, or if in pursuance of the same principle, they are compelled to reserve certain spheres of economic activity to the children of the soil quite in consonance with the accepted principles of international conventions, that would certainly involve a course of action to which the non-nationals in India can hardly object. Beyond, however, giving such special impetus to indigenous enterprise in certain spheres of economic activity, there will be absolute equality of treatment as between the British and Indian trading interests whenever it is found that the present relative positions of the two interests are based on free and equal opportunities. But at the same time difficulties must be realised and faced and I am aware that most of the trouble is due to the existing inequalities between British and Indian trade and commerce which the Indian nation can ill afford to be perpetuated under the terms of equality of rights.

All these points lead to the conclusion that it is essential for the Conference to address itself to the re-examination of Clause 14 of the Report of the Minorities sub-Committee.

II.

Clause 14 of the Report of the Minorities sub-Committee inspired by want of confidence which is unfounded.

In the first part of my Memorandum I have argued that Clause 14 of the Report of the Minorities sub-Committee, even as amended, is open to review and reconsideration, without examining the clause itself, either in form or in substance. I propose to do it now, to show that the clause has neither the authority of a precedent as a constitutional device nor the weight of cogent reasons in its favour. The spirit that informs it is, not only on the showing of European spokesmen on the subject but also of the Government

of India Despatch on the proposals of the Statutory Commission, that of want of confidence in the possible attitude of Indian politicians and statesmen in the future, if India were to get complete and unrestricted freedom in determining her own economic and commercial destiny. The start is thus made at the wrong point, even if the case of a mutual understanding or convention, whether based on reciprocity or not, was considered to have been established. If the representatives of the British commercial interests display a real spirit of accommodation and good will towards Indian aspirations, there is no reason why there should be any discrimination except that which is dictated solely by the national interests of India.

The Right of Discrimination is not an Arbitrary Right.

It is not difficult to conceive what the national interests of our country could possibly be, and it is proper that I should start with an attempt to define what this expression might mean. It does not mean, in the first place, that India claims for herself any arbitrary right to deal with non-Indians as she pleases. Apart from the obvious infringement of the principles of natural justice which such a course would involve, it would be clearly against national interest to pursue an arbitrary, and high-handed policy of discrimination even though it were practicable. The traditional culture of India has not been achieved by a policy of exclusion rearing itself in a maze of conflicting antipathies. It has been based essentially on sympathy, forbearance and toleration. India understands now more than ever that in the period of national reconstruction on a gigantic scale that will face her in consequence of the devolution of complete political authority on her, she will stand in need of the co-operation, help and sympathy of the world. There is thus absolutely no reason to fear that India should ever attempt to confiscate the just and legitimate rights of any non-nationals doing business in India. The patriotic Indians, however, seek, in national interest, to reserve the right of calling into question any rights or privileges which appear *primâ facie* to have a doubtful basis. Anyone who would argue that all the rights and privileges enjoyed by the British commercial community in India have been fairly and legitimately earned should understand that India has also a case which is contrary to this claim and the issue that the rights of the British commercial community doing business in India are to be guaranteed for all time to come is open to discussion for reasons stated hereafter.

Authoritative Recognition of the necessity of reserving certain Spheres of Economic Activity.

In the second place, it has been authoritatively recognised that every State has in national interest the right of reserving certain spheres of economic activity to the nationals of the State and also the power of regulating or restricting the conditions of admission to, or pursuit of, certain callings and professions, especially those which involve a devolution of the authority of the State or entail special responsibilities. In this connection, I may refer to a very important document prepared by the Economic Committee of the League of Nations and adopted by the International Conference on the Treatment of Foreigners held at Paris in the year 1929.

The British Attitude. The Draft Convention put up before the Paris Conference on the Treatment of Non-nationals, 1929.

The document is a Draft Convention " to embody in a common statute the civil, legal, fiscal, and economic safeguards which are indispensable for nationals of any contracting party who have been allowed to establish themselves in the territory of other parties in order to carry on their business or occupation therein, and to prevent any differential or unfair treatment which might in their own territory impede the trade of nationals of other countries." It is necessary to study this convention in some detail so as to

follow the nature of the attitude taken up by the British commercial delegation in the matter of the safeguarding of what they describe as their rights. There is no doubt that the analogy between the two cases is tenable in so far as the purpose of the Paris Convention was the same as that of the one suggested by the British commercial community. If there is any departure from the analogy, it consists in the fact that the British community in India is at present, commercially and politically, in a position of privilege and advantage while the High Contracting Parties who were asked to subscribe to the League Convention on the Treatment of Foreigners were all free and independent political entities with the usual exception of India. Another point of departure from the analogy consists, probably in the fact that the problem in India is not one between the nationals of different countries independent of each other but between the subjects of the same Crown. Barring these two possible points of departure from the analogy between the League convention and the proposed convention for India, the League convention, I submit, offers us a useful guide in the matter of finding a solution for the conflict of interests in India. The wealth of experience and knowledge and the weight of authority that were brought to bear upon the discussions of these questions of conflict in the Paris Conference invest their findings with an importance that cannot be exaggerated. The draft of the Convention was drawn up by M. Richard Riedl, Chairman of the Economic Committee of the Council of the League of Nations and representative of the International Chamber of Commerce which has among its adherents more than a thousand economic organisations, Chambers of Commerce, industrial and commercial federations and banking associations.

The Significance of the "Reservations" made by the Draft Convention.

A reference to the preamble of this convention quoted above shows that since the object of the Conference was to secure equality of treatment between the nationals of a country and the foreigners allowed to establish themselves in that country, nothing but the barest minimum of reservations was to be allowed for the protection of the national interests of each such State. As a matter of fact in the Committee of the Conference which discussed the economic and commercial provisions of the Draft Convention, the tendency was all but too apparent of giving the nationals of one country the utmost freedom and scope in the others which subscribed to the convention. The following clauses of the Convention as accepted in the Committee must therefore be understood from two aspects: as a matter of general practice followed by most of the countries in the world, and as laying down the minimum of reservations in the matter of trading and other economic rights in the interests of the nation.

Article 7 (as amended).

Main Principle.

"1. In the territories of each of the High Contracting Parties, and subject to the observance of their laws and regulations, nationals of the other High Contracting Parties allowed to establish themselves therein,.....shall be placed on terms of complete equality *de jure* and *de facto*, with nationals as regards:—

"(*a*) The conduct of all commercial, industrial and financial activities, and, in general, any activities of an economic character, without any distinction being drawn in this connection between undertakings operating independently and those which operate as branches, subsidiary undertakings situated in the territory of the above-mentioned High Contracting Parties;

"(*b*) The exercise of occupations which the laws of the said High Contracting Parties allow their nationals to carry on freely, or, in the case of professions for which special titles or guarantees are required, the exercise of these professions, subject to the submission of

the same titles or guarantees, as are required of nationals or are recognised as being equivalent, if necessary subject to reciprocity, by the High Contracting Party concerned.

Reservations.

" 2. The provisions of the previous paragraph shall not apply to the exercise, in the territory of any of the High Contracting Parties, of the professions, occupations, industries and trades hereinafter specified:

" (*a*) Public functions, charges or offices (of a judicial, administrative, military or other nature) which involve a devolution of authority of the State or a mission entrusted by the State, or the holders of which are chosen either by the State or by the administrations under the authority of the State; even if these are endowed with juridical personality and irrespective of whether or not they possess a territorial character, either general or local;

" (*b*) Professions such as those of barrister, solicitor, notary, authorised broker, and professions or offices which, according to the national laws by which they are governed, entail special responsibilities in view of the public interests;

" (*c*) Industries or trades forming the subject of a State monopoly or monopolies exercised under State control;

" (*d*) State undertakings;

" (*e*) Hawking and peddling;

" (*f*) Fishing in territorial and inland waters, and the exploitation of the riches of such waters, the coasting trade, pilotage and the internal services of ports;

" (*g*) Service in vessels or aircraft flying the national flag;

" (*h*) The exploitation of minerals and hydraulic power;

" (*i*) The operation of public services and of industries forming the subject of concessions;

" (*j*) The manufacture of arms and munitions of war;

" (*k*) Direct and indirect insurance operations carried out by individual underwriters."

The Economic Committee in their enumeration of the professions, occupations, industries and trades, the exercise of which may be reserved to nationals or made subject to differential provisions in the Draft Convention, took care to mention that it was " intended to be illustrative, not exhaustive." They noted further that " a large number of States, even among those which habitually accord liberal treatment to established foreigners, prefer to retain the right to make a distinction between their own nationals and these foreigners by granting only the most favoured nation clause; while at the same time a large number of existing treaties in practice grant national treatment to foreigners admitted to the territory of the contracting parties, subject to certain duly specified exceptions." At the same time it would be fair to recognize that Article 19 of the convention as amended laid the High Contracting Parties under the obligation " not to avail themselves of rights reserved to them under the provisions of the present convention in a manner unfriendly towards the nationals of one or more of the High Contracting Parties."

Article 20 (as amended).

Encouragement of National Industries, the Paramount Consideration.

" Without prejudice to the stipulations of laws relating to the encouragement of national industries, or to the award of contracts concluded by public authorities by way of tender, the High Contracting Parties undertake not to prejudice the guarantees of equality between national and foreign under-

takings as laid down in the preceding articles by means of exemption of taxes or duties or by differential regulations affecting production, trade or the level of prices."

I have taken the liberty of quoting the above extracts somewhat in detail to show what a competent body with the distinct idea of promoting equality of trading and commercial rights as between the nationals of different countries considered to be absolutely essential for the protection of national interests of the country. How much stronger is the case of India where the national interests of the country have been for a century and a half subordinated to Imperial interests, so much so, that without the impetus of a great national urge and a drastic equation of opportunities and resources, she might not find sufficient elbow room for any national progress at all. The present situation is that not even in one of the professions, trades or occupations recommended for being reserved for the nationals of a country in Article 7, paragraph 2, of the Paris Convention has India any manner of authority in regulating such professions, trades and occupations. All of these are under the effective control of non-Indian interests.

Is Discrimination against British Subjects possible?

The question may now be raised that a convention which has been deemed to be applicable to the nationals of two independent countries cannot apply to the determination of the economic relations between England and India. It is needless to say that I read the claims advanced by the British commercial community in India as a part of this larger question of the future relations between Great Britain and India. It may be argued that India cannot consistently discriminate between the rights of Indians and Britons, who are both British subjects so long as India remains part of the Empire. In reply to this contention I will enquire first if it is an implication of remaining under the same Crown that India should be unable to preserve the national interests of the country, for that is what discrimination, if we must use this word, is meant for. If the answer is in the affirmative, I would only regret it, and say that it will not satisfy our country. On the other hand, I have as my text a section of an Act of Parliament, which lays down:—

Section 26 (1) of the Imperial Nationality Act.

"Nothing in this Act shall take away or abridge any power vested in, or exercisable by, the Legislature or Government of any British possession, or affect the operation of any law at present in force which has been passed in exercise of such a power, or prevent any such Legislature or Government from treating differently different classes of British subjects." Section 26 (1) of British Nationality and Status of Aliens Act, 1914 (as amended). The wording of this section is sufficiently explicit, but to make it more clear I may refer to two important pronouncements relevant to this issue. At the Imperial Conference of 1923, General Smuts, then Prime Minister of South Africa, the home of discriminatory legislation against Indians, stated in a Memorandum submitted to that Conference:—

General Smuts in 1923.

> "There is no equality of British citizenship throughout the Empire. On the contrary, there is every imaginable difference. There is no common equal British citizenship in the Empire, and it is quite wrong for a British subject to claim equality of rights in any part of the Empire to which he has migrated or where he happens to be living . . .
>
> "The common Kingship is the binding link between the parts of the Empire; it is not a source from which private citizens will derive their rights. They will derive their rights simply and solely from the authority of the State in which they live."

Earl Crewe in 1911.

It was in pursuance of what General Smuts conceived to be the "newer conception of the British Empire" that justified the principle of South African discriminatory laws against Indians settled or wanting to settle in the Union. A similar view was expressed earlier—at the Imperial Conference of 1911—on behalf of His Majesty's Government by the Earl of Crewe, who was then the Secretary of State for India, who said:

> "Nobody can attempt to dispute the rights of the self-governing Dominions to decide for themselves whom in each case they will admit as citizens of their respective Dominions."

Now, are the instances of such differentiation between the different classes of British subjects in the Dominions at all rare or infrequent? As a matter of fact, the question of British subjecthood, as one writer remarks (Pittius, *Nationality within the British Commonwealth of Nations*, p. 163), has hardly been taken into consideration at all in the process of discrimination. Restrictions have been imposed in the matter of immigration, including imprisonment or deportation of undesirables, and even in the matter of social and political rights. Even in England, where there is no legal distinction between British subjects hailing from various parts of the Empire, there are some regulations, as for example, those against coloured persons joining certain regiments. In the Irish Free State, British insurance companies are allowed to operate only after depositing a heavy security as a local reserve operating as a discrimination in favour of Irish companies.

The British claim for Equal Citizenship is thus tenable neither in Law nor in Constitutional Practice.

All these facts go unmistakably to prove that the claim that the British subject has an inherent right to equality of treatment in all parts of the Empire along with the nationals of those parts is tenable neither in law nor in constitutional practice. The recent constitutional tendency on the other hand points to the creation of a new kind of national status by several Dominions adopting a form of Dominion nationality, independent of its adoption of the Imperial Nationality Act, of 1914. These laws, however, are of restricted application and useful only as an index of the recent lines of the evolution of Dominion Status. The lesson for India is obvious. A self-governing India, equal in status with the Dominions, should have every constitutional right, not only to pass restrictive legislation upon any class of British subjects she desires in pursuance of national interest, but also might evolve an Indian citizenship which, in the fulness of the conception, as hinted above, will enable her to lay down conditions for the exercise of full civil and political rights.

III.

Political Development depends fundamentally on Economic Development.

It should be clear from what has been discussed in the previous paragraphs that, if India is compelled to discriminate against any class of British subjects in the national interest, it would be consistent with the existing constitutional practice. As to the question, if India is going to exercise the right and to what extent, I have already endeavoured to offer some suggestions. The freedom of determining one's own economic future is the inalienable part of the devolution of political authority, and India is so backward in industrial and commercial enterprise, that I have no hesitation in stating my belief that the initial period after the grant of political freedom, will inevitably be taken up with the reconstruction and rehabilitation of her economic system that is now labouring under serious handicaps. My appreciation of the Indian view enables me to emphasise that India does not want to ignore the just and reasonable rights of any commercial community doing

business in India and hit them summarily and without justice. The backwardness of Indian commerce and industry compels us to examine all such rights or privileges and to see whether they are blocking the promotion and development of Indian commercial enterprise, by creating and perpetuating monopolies or by otherwise restricting fair competition, or by the possession of discriminatory privileges of whatever nature operating against the interests of the children of the soil. The mere re-examination of such rights or privileges does not mean their forfeiture or even repudiation, if the problem is approached in a spirit of goodwill, mutual understanding and accommodation. I do not see any reason why such examination should mean any harm to anybody unless the interests themselves be thriving upon discriminatory advantages. If the rights and privileges at present enjoyed by the British commercial community are fair and proper, and if the people of India have a genuine grievance that these, or at any rate some of them, are not so, I do not find any reason why the former should at all resist the Indian proposal to refer all such disputed cases to arbitration by an impartial and representative Board, meeting in an atmosphere of reason and helpfulness.

The Recognition of the Right of Discrimination as a matter of Principle does not preclude Mutual Adjustments.

Before I proceed further, one thing should be made clear. Certain industries, trades, callings, and professions must be reserved to the nationals of the country, whatever may be the rights of any commercial community incidental thereto. In these spheres, the interest of the nation is absolute, and this right should be recognised as a matter of principle. The Paris Conference regarding the treatment of non-nationals has made a list that is meant to be illustrative. It need hardly be emphasised that the list should be interpreted to mean that there are certain spheres of activity in which the interest of the nation must have precedence over all other interests. Subject to the recognition of the above principle, I am sure that an equitable readjustment may be arrived at on many of the existing points of conflict. It is relevant to point out in this connection that the principle of protective duties to encourage indigenous industries has never been challenged in India or in any other country. The policy of the Government of India not to grant concessions such as bounties to industrial concerns unless the company, firm or persons provide facilities for training Indian apprentices, and in the case of a company, unless it has been formed and registered in India, and has a rupee share capital and a reasonable proportion of Indian directors* was, so far as I know, never criticised on the ground that it involved an undue interference with, or forfeiture of, the existing rights of foreigners doing business in the country. Again, the necessity of discrimination has been recognised in the stores purchase policy of the Government. The reason why no outcry was raised against these, which are undeniably discriminatory in a sense, was possibly due to the fact that these were considered to be necessary in the interest of India.

Discrimination in favour of National Interest, but not against the British Community as such.

After all, India looks at the problem of commercial safeguard from two broad standpoints. One is that the British commercial community is a part of the larger body of non-national interests that are doing business in India at the present moment, and that India proposes to exercise her right of discrimination not against the British commercial community as such, but as a part of the whole of the non-national interests existing in India. Nobody can question the right of India to discriminate against one who is not a national, and for all practical purposes, the British industrialist, as he is

* This extract is quoted from the Secretary of State for India's letter to the Secretary General of the League of Nations, No. E. & O. 7954/28. An instance of this may be found in the Steel Industry Protection Act of 1924.

to-day, has not identified himself with the interests of the nation. The British commercial community is now entrenched in a position of advantage, and this position is the result of certain circumstances over which India on account of her backward condition has had neither any influence nor any control. If this position is allowed to be made a permanent feature of our economic system, it would mean that the Indian would for ever remain in a position of absolute inferiority. India requires safeguarding against that eventuality, for she is weaker as compared with the wealth and resources of Great Britain.

That the present commercial superiority of Britain in India has been due to a practical neglect of Indian interests in many directions and the exclusion of the people of India from many advantages and concessions will appear from the data given below. In claiming equality of trading rights, the British commercial community is really demanding the perpetuation of these inequalities and discriminatory privileges while India expects the removal of these inequalities as the first step towards the rehabilitation of her own industrial life.

How British Commercial Superiority has grown up.

In tracing the history of the superiority of British enterprise in India, I need hardly mention the importance of the social approaches to the realisation of patronage and power enjoyed by the European community in this country. In India, for over a century and a half, the sources of that patronage and power have been under the command and disposal of the representatives of the British community in India.

A.—Social Approaches.

If, as a result of that, the lucrative contracts and tenders go to European firms, if leases and concessions are granted to European companies, if municipal monopolistic franchise has been issued to European corporations, we have nothing but the political atmosphere under which we live to blame. This political atmosphere has made it impossible for the influence of Indian public opinion to bear upon the control of the main lines of public policy. It is for this reason that, for years past, Indians have been insistently clamouring for self-government, and this agitation has now taken a determined form in India.

B.—The Cotton Industry.

I may here refer to some concrete measures adopted by the Government of India for the promotion of British commerce and industry, among which none has been so inequitable as the cotton excise duty repealed only in 1926. The majority Report of the Indian Fiscal Commission had laid down "that the existing cotton excise duty should, in view of its past history and associations, be unreservedly condemned." The Minute of Dissent considered it necessary to point out "that the cotton excise duty was not imposed for revenue purposes, that it was levied purely to propitiate Lancashire." "The Indian cotton excise duty has always been politically, economically, and, above all, morally indefensible," wrote the London *Times* in commenting upon the agitation of 1917-18. The discrimination involved in the excise levy is clearly borne out by the Report of the British Mission to the Far East which shows that an industry thriving upon unequality of trading rights cannot prosper where competition is free and open.

C.—The Shipping Industry.

I may refer again to the shipping industry. It may be remembered that it was Mr. Haji's Coastal Traffic Bill that started the hare of "Safeguards" for the British commercial community, and it was instanced as an illustration of discriminating legislation in the communication addressed by the Associated Chambers of Commerce to the Statutory Commission in July, 1929. I

need hardly point out that the Associated Chambers of Commerce chose a very unfortunate example to launch their campaign because the reservation of coastal traffic is regarded as a national duty in almost all the countries of the world, and there could be no dispute on the principle of the Bill. I have already referred to the draft convention prepared by the Economic Committee of the Paris Conference regarding the treatment of non-nationals (1929) laying down that the coasting trade, pilotage and the internal services of ports are subjects in which discrimination might, in national interest, be made between the nationals of one country and those of another. The question was really whether Mr. Haji's Bill amounted to any unjust or unfair discrimination, because we cannot accept the position implied in the agitation of the British mercantile community against the Bill that India shall in the future be debarred from exercising her inherent right of differentiating between national and non-national interests in cases where the interest of the nation as a whole demands it. Incidentally it may be pointed out in this connection that the success of British shipping industry has not been attained by the pursuance of a *laissez faire* policy. The history of the ruin of Indian shipping is well-known to all publicists and readers of the economic history of India. To that I need not refer in detail now and rouse vain regrets. But the following points which have been taken from a recent article in the *Young India* will be of interest:—

(1) The employment of Indian-built and Indian-manned ships in the trade between England and India was prohibited on account of the agitation of British ship-builders, shipwrights and seamen.

(2) British shipping Industry was assisted in its initial stage through Government subsidy. Mail subventions are also given by the Government to British shipping companies, not only foreigngoing but also coastal and inland, though there are efficient Indian companies working. These non-Indian companies do not employ Indians in their higher staff, either afloat or ashore, as dock officers, engineers, or wireless operators. After the establishment of the *Dufferin* a conference of shipowners trading with India was held in London at the instance of the Shipping Federation in 1927 where it was emphasised that "it was unfair to British Dock Officers to have a training ship in India which should look to Indian shipping companies only and not to British shipping companies for employment."

(3) British shipping companies operating in Indian waters were till recently (1923) exempt from the payment of the Indian income tax.

(4) In the matter of shipping insurance also, ships with Lloyd's A. 1 certificate which are regarded irrespective of Indian ownership as first class risks by experts in London have been graded second class by the insurance agents in India solely on the ground of their Indian ownership.

The above points are illustrative, not exhaustive. Many more instances in addition to the above could be cited to show that there are agreements in force which practically preclude Indian shipping companies from getting the custom of European shippers and all sorts of devices such as under-cutting of freights,* refusal of the insurance companies to insure, except at a higher rate, goods carried by Indian vessels and so on, are adopted to kill Indian competition. The Government have done nothing and yet Sir William Clarke had declared from his place in the Government of India in 1916 that "the building up of industries where the capital, control and management should be in the hands of Indians is the special object we all have in view."

D.—The Coal Industry.

I may next pass on to the example of the British owned and British managed collieries in India which have thrived not by free and fair competition

* See *Economics of Shipping* by S. N. Haji, pp. 153-54.

but under special advantages, *e.g.*, the patronage of the European owned collieries by the Railways which are the largest purchaser of coal in India. (*Vide* evidence of the Indian Mining Federation before the Indian Railways Committee and their recent statement to the Working Committee of the Indian National Congress.)

It is needless to pile up instances of the discriminating advantages under which some of the biggest examples of commercial enterprise have flourished in India and discrimination which they themselves have practised towards Indians while doing business in this country.

The Devolution of Political Authority will remove some of the existing Inequalities. The consequent Alarm of the Europeans.

We hope that with the attainment of self-government, many advantages that the European commercial community enjoy on account of the government being in the hands of their kinsmen would disappear, and that we would be able to recover the ground lost in the matter of economic and industrial development. The European commercial community seems to have been alarmed at this quite natural and reasonable expectation of the Indians, and their apprehensions to be dislodged from their entrenched position have prompted them to raise the plea of too comprehensive "safeguards" as the condition for their agreeing to the grant of self-government which means, that all their rights and privileges of whatever manner or description must be made into a permanent feature of Indo-British commercial relations. In other words, the factors which account for the industrial and commercial inferiority of India would operate in perpetuity. We cannot agree to such a postion. On the other hand it is fair to point out that even though the devolution of political power will lead to the removal of some of the existing inequalities, certain others will remain and these ought to be liable to re-examination in India's interest. If it is found that any of these inequalities is definitely retarding the development of Indian industrial enterprise or operating against India's interest, India should then be free to decide upon the necessary safeguards.

The opinion expressed by Sir Hubert Carr that "our commercial rights are not open to negotiation" was a frank advocacy of the views of the European community in the most extreme form. As a matter of fact, there is ample evidence to show that Indians are anxious to meet the claims of the European community with reason and good will. Being a commercial man myself, I recognise the importance of vested rights in commerce and industry. Even if it were possible to withdraw all such rights it would in many cases be undesirable to do so. But in that case the Britishers should evince their goodwill and equal fellowship with India. Unfortunately their attitude, at present, in commerce and industry, is one of aloofness and exclusion and this has removed all points of sympathetic contact between the European and Indian mercantile communities. The point needs to be clearly emphasised that it is not England but India which requires safeguarding—safeguarding against the unequal competition that she has now to face from powerful non-national rivals. Otherwise, India will never be able to get out of the rut into which she has fallen. By safeguarding I do not mean safeguarding any and every industry. I want to safeguard the key industries of India like iron and steel, coal and other industries that might be decided by the Legislature as key industries; the industries of transport—land, water and air—those which involve a devolution of the authority of the State, *e.g.*, high appointments in public service including the military, those which control special responsibilities like credit or insurance institutions; the mineral resources of the country; fishing and forestry rights; public utility services and industries, specially infant industries, forming the subject of concessions and special privileges; State monopolies or monopolies exercised under State control. This list is suggestive and may be altered, amended or added to by the Conference. But what I want to emphasise is that the principle of keeping the interests of India always in the foreground of our public policy should be recognised, and once this principle is recognised I have no objection

to a Conference being called at a later date to work out the implications of this policy in detail. I cannot emphasise too much that a true perspective of the problem can be gained only by a realisation of the advantages of common fellowship of the two great nations, British and Indian. The Round Table Conference has provided India with a momentous occasion and opportunity of meeting the representatives of the British nation in whose innate sense of justice she has full confidence. India requires their aid and co-operation. I hope that this Conference will enable us to arrive at a decision that will speed India along the path of contentment, well-being and prosperity.

ANNEXURE 13.

MEMORANDUM FOR THE ESTABLISHMENT OF AN INTER-PROVINCIAL COMMISSION FOR INTER-PROVINCIAL ECONOMIC SAFEGUARDS.

By Dr. Narendra Nath Law, M.A., Ph.D.

Of the various problems that have been raised by the scheme of a Federal Constitution for India, the question of inter-provincial safeguards is very important. So far as Bengal is concerned, I may say that public feeling is undoubtedly in favour of providing for some sort of inter-provincial safeguards. Rightly or wrongly, the view is held in Bengal that unless her interests are safeguarded, they will not be adequately looked after by the Federal Legislature as it will be constituted by the representatives of Provinces at widely different stages of industrial and commercial development. Some of the recent measures adopted by the present Indian Legislature, notably the Salt Import Duty Act, have been definitely labelled as anti-Bengal and the belief is now shared by a substantial section of the people of Bengal that unless there are adequate safeguards, the interests of Bengal are not likely to receive proper and adequate care. This belief has its basis in certain tendencies in fact. These indicate, in the first place, a definitely provincial bias exhibited by certain Provinces in many matters; secondly, there is the gradual dispossession of the Bengalees from the fields of trade and commerce in their own Province by non-Bengalee interests. For this state of affairs, the responsibility primarily attaches to the Bengalees themselves who for generations have preferred intellectual pursuits to trade and industry. But this is the very reason why the Bengalees ought to be made to follow trade and commerce, and to that end, they should be assisted by means of a vigorous public policy.

The problem has been intensified by the question of middle-class unemployment. It is a question which is peculiar to Bengal and on which Bengal feels very keenly. The belief is now shared by a large section of the people of Bengal that one of the principal causes of this gradual deterioration of the economic position of the middle class is due to the passing of practically all the industrial and commercial interests of the Province out of their hands. Moreover, the 1921 survey of industries in the Census Report gives us the figures that in the three industries, jute, coal, metal and machinery, only 100,000 labourers were returned as men and women born in the Province (Bengal) against 250,000 men or women born in other Provinces. In other words, in these industries, for ten Bengalee employees there are twenty-five non-Bengalee employees. The position has certainly grown worse in the intervening decade. As for minor industries, in them also the Bengalee is being slowly but surely displaced.

The cause for this backwardness of the Bengalee in his own Province is due, no doubt in a large measure, to deficiencies for which the Bengalee himself is responsible. It is proper that these defects should be recognised for the reason that it would spur our young men to develop a more practical outlook on business and industry and shake off their inordinate devotion to the gentle professions which are already overcrowded. But at the same time

it should be recognised that even if the Bengalees were to shake off their prejudices against industrial or commercial pursuits, there would still be great obstacles created by the powerful influx of capital and interests exploiting the resources of the Province. Besides, it is always a question how far the inertia of the Bengalee mind for commerce and industry has not itself been generated by the continued divorce of the people of this Province from these interests on account of the circumstances over which they have had no control.

What is needed in these circumstances is a forward policy for Bengal. Provincial patriotism is not a bad thing if its aim is to promote the well-being of the people of the Province without any detriment to the national interests. A well-contented healthy provincial life is the *sine qua non* of a prosperous federation. To that extent it is necessary to strike at the root of all discontent. A forward policy for Bengal is calculated to achieve that end, but for that purpose resources are necessary.

The Meston settlement and the action taken thereon have left Bengal in a sorry plight from the financial point of view. The following table summaries the position of Bengal as compared with other Provinces.

Expenditure per capita per annum according to Budget estimates for 1929-30:—

	Rs.
Bombay	8·291
Punjab	5·549
Madras	4·188
Assam	3·920
C. P.	3·792
U. P.	2·729
Bengal	2·554
Bihar and Orissa	1·800

The expenditure per capita on nation-building services is still more instructive. Taking the Budget accounts of 1928-29, we find that in that year Bengal spent Re. 0·58 per capita as against Rs. 1·59 in Bombay, Re. 1 in Madras, Rs. 1·40 in the Punjab, Re. 0·77 in C. P., Re. 0·76 in Assam, Re. 0·65 in the U. P., and Re. 0·42 in Bihar and Orissa. These figures show that Bengal has not resources enough to develop her nation-building services and in this respect she is behind all the major Provinces of India with the exception of Bihar and Orissa. It is thus necessary that this deficiency of Bengal should be removed at the next financial settlement and adequate funds placed at her disposal to undertake all those schemes of development that are likely to benefit the people of the Province. As it is, Bengal's total contributions to Imperial revenues are incommensurate with the resources which she has got under the existing scheme. That this grievance is justified is proved by the fact that Bengal's contribution of Rs. 63 lakhs under the Provincial Contributions Scheme was remitted from the very first of the operation of the Reforms.

Apart from the benefits likely to accrue from better financial readjustments, Bengal requires certain industrial and commercial safeguards—safeguards against the undue neglect of her interests by other Provinces. I recognise that it is not a practical proposition to attempt to lay down elaborate constitutional measures for safeguarding the economic interests of any particular Province. Nor do I want it. What I aim at is some general provision for the safeguarding of the interests of a Province as against undue interference or exploitation by any other Province. I therefore propose the setting up of a standing Inter-Provincial Commission under the constitution to investigate all causes of conflict and recommend measures for relief to the Federal Government. The necessity of setting up the Commission under a constitutional guarantee arises from the fact that in that case it will not be with the Federal Government to evade or ignore the

issues under pressure from any of the provincial interests when in conflict with those of any other, especially if the former are strong and powerful as compared with the latter. It is not unlikely, and is in fact conceivable, that the Federal Legislature may happen to be dominated by the representation of two or more Provinces and may refuse to entertain the grievances of any particular Province in respect of any legislation or any administrative measure. It may even refuse to set up a Board of Enquiry if it was optional for it to do so in the interests of those Provinces. If, on the other hand, an Inter-Provincial Commission be established under the constitution on the lines of the Tariff Board or the Railway Rates Tribunal with extensive powers of investigation but with advisory functions, it would have the advantage of directing public opinion to the existence of genuine grievances with the consequent necessity of removing them together with the advantage that its decisions will evoke no suspicion or resentment on the part of any Province; and at the same time, since it will only have advisory powers, the authority of the Federal Legislature, or of the Provincial Legislature as the case may be, acting in their specific jurisdictions, will not be impaired. This last point is to be carefully borne in mind since many of the decisions of the Commission would involve the taking of steps which it would be competent for the appropriate Legislature alone to take. Otherwise, Central Responsibility or Provincial Autonomy would be reduced to nullity. An Inter-Provincial Commission may be a small body of three or four persons of acknowledged probity as members with a Chairman enjoying the status of a High Court Judge assisted if necessary by one or more assessors. The Commission will report their recommendations to the Federal Prime Minister or the Provincial Chief Minister, as the case may be, who will place them before the Federal Legislature or the Provincial Legislature for necessary action.

In order to provide against the presentation of any frivolous grievance to the Commission by a snap vote, it may be further laid down that the resolution for the reference of any matter for the decision of the Commission must be supported either by an absolute majority of votes in the Legislature or even by a higher majority, so that it will only be matters on which a Province might feel keenly that a decision of the Commission would be sought. Such a provision would thus meet effectively the charge of provincial narrowness and that may be advanced against the theory of inter-provincial safeguards.

This is only one of the suggestions put forward and I am aware that other alternative suggestions may be made. Federation implies a Supreme Court, and a Committee of the Supreme Court may with the help of assessors decide the cases instead of a separate Commission. I realise, however, and I repeat that the best safeguard for the interests of any Province is the growth of a strong and healthy public opinion reflecting upon public policy from a broad and catholic standpoint. My object is to bring to the notice of the Delegates of the Round Table Conference the worsening plight of the people of Bengal in the economic struggle and provide some means for relief in so far as that plight is due to the operation of economic forces detrimental to the interests of the Province. I hope I will get their full support for the proposal which I have formulated, particularly as it does not injure the interests of any Province in the future constitution of India.

ANNEXURE 14.

MEMORANDUM REGARDING THE POSITION OF ASSAM.

By Srijut Chandradhar Barooah.

Communal Problem and the Minorities Agreement Document.

There is no communal problem in Assam. Practically, we have only two communities, the Hindus and the Muhammadans. We have no Depressed Classes; and the small number of the people who belong to the lower castes

of the Hindu community have very much better place in Assam than in any other Province in India. They are not untouchables; they are not pressed down by the higher castes and they have their representation in the Legislative Council, the Local Bodies and in the Public Services. I am therefore very much pained to find that the minorities in this Conference, perhaps unwittingly, are going to create a dissension among us by allotting 13 seats for the so-called Depressed Classes, in our future Legislative Council and proposing a separate electorate for them.

Nowhere in India the Hindus and the Muhammadans have ever lived in better peace and amity. Both these communities in Assam are practical enough to realise the principle of "give and take." Of the two Ministers and two Executive Councillors in Assam, three are Indians; and out of these three, two have always been Muhammadans, although the Muhammadan population of the province would not justify this. But yet nobody has ever heard the slightest protest against this from the major community. Neither the Hindus nor the Muhammadans in Assam object to give each other a little more than what is justly due. But when one pretends to hold the scale of justice in one's hand and dictate terms the matter is quite different. Looking from this point of view, I fail to understand why in the Minorities Agreement Document there should be allotted as much as 35 seats to the Muhammadans out of 100 in the future legislative body of Assam when their population strength does not come up to even 32 per cent. of the aggregate. This is the second point on which I cannot agree with the minorities agreement.

The third point of objection is to the number of seats allotted to the Europeans in the Assam Legislative Council. The entire Christian population in Assam is 202,586 which forms only a little over 2 per cent. of the population of the Province. The Europeans must have been included in this figure; for I could not find them separately shown in the Census papers in the India House. And yet the framers of the Minorities Agreement Document thought it fit to allot 10 seats to the Europeans in Assam besides 3 to the Christians, and 1 to the Anglo-Indians.

The document prescribes separate electorates for the present. But I am afraid that the large majority of my people will not approve of this. Excepting only one section of the Muhammadans who would like to have separate electorates for the first few years, the people of Assam in general are in favour of joint electorates. The "Assam Muslim Association," which enlists as its members a very considerable portion of the educated and influential Muhammadans in Assam and which is the only organised Muhammadan political body in the Province, by a unanimous resolution, has asked me to place the claims of the Muhammadans not for separate electorates but for reservation of seats. The Association also claims weightage, if the Muhammadan population of the Province is reduced by the reason of the transfer of the district of Sylhet from Assam to Bengal for which there is an agitation in the country; and the Hindu community will gladly consent to the required weightage in the event of such a transfer.

Under these circumstances, I cannot accept the Minorities Agreement Document. The motto of Assam is joint electorates with reservation of seats on population basis.

Territorial Redistribution.

Since the last Session of this Conference, there has been an agitation in Assam for the transfer of the districts of Sylhet, Cachar and Goalpara from Assam to Bengal. None can dispute the right of Sylhet to be transferred to Bengal. The people of Sylhet are Bengalees. Their district was joined to Assam only for convenience of administration of the Province of Assam at a time when Assam alone was too small for separate administration. Since then circumstances have changed. The agitation for the transfer of this district has been going on for a long time. The Bengal Legislative Council is in favour of the transfer; and so was the Legislative Council of Assam some time ago. In public meetings all over Assam and Bengal resolu-

tions are being passed unanimously in favour of the transfer. Sylhet is also a deficit district; its revenues cannot expand, and the rest of Assam has to find no less than about eight lakhs of rupees, more or less, every year for the administration of Sylhet. For these reasons, the people of Assam proper do not object to the transfer of Sylhet to Bengal, provided only that the political status of the Province is not lowered by reason of any such transfer— and for this, there is not the slightest justification whatever; for Assam, without Sylhet, with her increasing population, with her hill areas and her vast resources, will form not only a self-supporting but a more prosperous and homogeneous Province, almost as large as Bengal in area, but of far greater potentialities. I may mention here that as far back as the year 1925, the Government of Assam in their letter No. 1573-Pol-D/11th August, stated that in the event of the transfer of Sylhet to Bengal, "the maintenance of the existing system of administration will be a lighter burden on the reduced Province of Assam," and that "it would be perfectly feasible to maintain Assam as a major Province." I hope I shall not be misunderstood. I never ask Sylhet to go away. All that I mean is that if Sylhet wants to go, the demand is only just and proper, the transfer will be of advantage to the Sylheties and the Assamese alike, and that the rest of Assam does not feel justified to stand in the way.

The case of Cachar and Goalpara is very different from that of Sylhet. Unlike Sylhet, in both these districts the agitation is being carried not by the real and permanent inhabitants, but by some people from Bengal who want to take them away to their own Province. These people are residing in these areas only for business or professional purposes, without being really domiciled, and can have, therefore, no voice in the matter. In Cachar, the original and permanent inhabitants, the only people whose voice ought to count, are unfortunately too inarticulate to make themselves heard. Nevertheless, they do not and they cannot want to go to Bengal; for they have their kith and kin not in Bengal but in Assam, and their association and their history are connected not with Bengal but with Assam. The transfer of Cachar, unlike that of Sylhet, will also create great administrative difficulties in Assam.

The transfer of Goalpara cannot be effected without causing very serious discontent, both in that area and the rest of Assam, and doing the greatest injustice to the people of both. It is an integral and most indispensable part of Assam proper. In language, in religion, in history, in manners and customs and above all, in flesh and blood, it is pre-eminently Assamese and has nothing common whatever with Bengal. "The District Association of Goalpara," the only political body, composed of the indigenous population of the district, have asked me to oppose strenuously any proposal for the transfer of their district and to press their right and determination before this Conference to be always retained in Assam, where alone they can find proper scope for their development.

There are a few Zemindars in Goalpara whose lands are permanently settled, unlike any other lands in Assam, except those of Sylhet. They think that they have no proper representation in the Legislative Council of Assam. While in Bengal, where the Zemindars form a very influential body, their interests will be much better served; although I may remark that the Zemindars of Sylhet, who have so long put up with the same disadvantage, have never been heard to complain on this score. This demand seems rather to be for special representation than for the splitting up of the Province. In fact, excepting these few Zemindars, whose number is only five or six, there is not one single Assamese in Goalpara who does not oppose the transfer of the district to Bengal. And any attempt at such a transfer is bound to give rise to a very strong agitation and great discontent in my Province.

Hill Tracts.

The hill areas of Assam inhabited by various tribes of aboriginals are in different stages of advancement. Some are sufficiently educated and advanced to be included in the new constitution of the Province, while

in the case of others it is too premature to think of it. The people of the plains urge that no part of the hill areas should be separated from the Province for which there are historical, economical, linguistic, racial and other weighty reasons. The Government of Assam, therefore, propose to include the advanced portions of these areas in the new constitution and leave the backward portions, *viz.*:—the Naga and the Lushai Hills, to be administered by the Governor under the control of the Governor-General. In their letter of July, 1931, to the Government of India, the Assam Government rightly observed—"the solution must of course provide not only for the protection of the plains from molestation, but, on the one hand for a guarantee to the people of Assam of their legitimate claim on the natural resources and freedom of trade, and on the other, for due regard to the interests of the aboriginal inhabitants. . . . The Province of Assam should still be able to have its share in such mineral wealth as may be discovered in the hills." I beg to support this proposal of the Government of Assam and to share these views. But I beg to add that an earnest attempt should be made to befit these backward tracts for full representative Government and they should be included in the Constitution of Assam as soon as they are tolerably advanced. I also add that in the meantime "the interest of the aboriginal inhabitants" and "the legitimate claims" of the people of Assam, on the "resources" and the "mineral wealth" of these hills should be scrupulously guarded.

Central Government and Provincial Autonomy.

The people of Assam are unanimous in their demand for responsibility in the Central Government, and for full autonomy for their Province. They are of opinion that it is idle to speak about the freedom of India, so long as the Government of India is not responsible to the chosen representatives of the people. As for provincial autonomy, no other Province has a better claim to it than Assam. We were an independent people not very long ago. There are no communal troubles in Assam. The relations between the Hindus and the Muhammadans have nowhere been more satisfactory. In social matters, we are much ahead of many of the advanced Provinces in India. In education, Assam is one of the foremost Provinces in British India. And lastly the Reforms of 1919 have nowhere been more successfully worked than in Assam. I therefore beg to submit that nothing less than a first class autonomous government will satisfy the people of my Province.

Committees and Commissions.

Lastly, I beg to ask that the Boundary, the Franchise and the other Committees or Commissions that may hereafter be appointed may contain a full representation of the Province of Assam.

November 16th, 1931.

ANNEXURE 15.

MEMORANDUM ON THE COMMUNAL PROBLEM IN BENGAL.

By Mr. J. N. Basu.

The Hindus constitute nearly 44 per cent. of the population of Bengal. In addition, 2 per cent. of the population (including a small fraction of such proportion consisting of Anglo-Indians, whose home is in India, and of Europeans ont permanently settled in India) consist of Jains, Buddhists, and people of primitive faiths who are closely akin to Hindus, and are now placed on a common electoral roll with the Hindus.

Apart from widespread education amongst the Hindus and the very important position they have occupied for centuries in the organisation of credit both for internal and external business and trade, in the conduct of such trade and in the distribution of commodities, in the organisation and management, with a few exceptions, of nearly all non-state institutions for education and other objects of public welfare (of which there is a very large number, far exceeding the number of State Institutions), the importance of the Hindus in Bengal was recognised when the Lucknow Communal Pact was arrived at in 1917, after protracted discussions by accredited representatives, both Hindu and Muslim, of the most important organisations in India, political and communal. The Lucknow Pact, by willing assent of both communities, allowed to the Hindu Community of Bengal 60 per cent. of the elected seats in the Provincial Legislature.

The Governments of England and India adjusted the Communal question under the Government of India Act, 1919, on the basis of the Lucknow Pact.

The conditions of life in Bengal do not require a further accentuation of the communal cleavage in the electorates and in the Legislatures, as a change in that direction is likely to affect seriously whatever progressive tendencies there are in the administration in matters of general welfare and in the conduct of trade, internal and external.

The entire Hindu community of Bengal is convinced that there is no justification for the establishment in Bengal of communal electorates and of reservation of seats for a majority community. Such a system is not only unjust to the minorities, but experience shows that it is uncalled for. Amongst the various considerations which make reservation of seats and separate communal electorates for a majority community undesirable, attention is invited to the following points:—

1. In Bengal, local bodies consist mostly of elected members. There are no communal electorates or reservation of seats in any of the very large number of local bodies in Bengal, except the Municipal Corporation of Calcutta. In localities where the land-owing classes, the traders, and money-lenders are mostly Hindus, and the electors are mostly Muslims, recent elections have shown that the majority of elected representatives on local bodies has consisted of Muslims.

2. The division of the electorates into separate compartments according to creeds with the right to each compartment to send communal representatives has led to the formation in the Legislature of Bengal of communal parties, and not of parties constituted on the basis of policies of general public welfare. This has seriously impeded the progress of the Province since the establishment of communal selectorates and communal representation. The Ministers in the Departments, in which the responsibility rests with the Legislature, are attached to communal groups. Measures emanating from Ministers, belonging to communal parties, have been received with suspicion and have been opposed on account of distrust generated by the present grouping of parties due to separate communal electorates sending communal representatives.

3. By a majority community being limited to sending to a Legislature its separate representatives, the minorities, however important they may be, are deprived of the privilege of requiring such representatives to consider and support the minority point of view. It is almost an incitement to religious strife when a candidate for election to the Legislatures has to base his appeal to the voters not on a policy of general welfare, but on a policy of communal exclusiveness and aggrandisement. A system of communal electorates deprives the country of some of the best workers who naturally object to basing their political action on differences in the personal religious faith of individuals and communities. It should be remembered that the State

in India has nothing to do with the religion of Church, either of the Hindus or the Muslims.

4. It should also be borne in mind that the basis upon which the British connection with India was founded and worked until recently has been the professed policy of the open door without distinction of class or creed as regards political authority or State preferment. After a century and a half of Britain's connection, no occasion has arisen for disturbance of those foundations and of regulating political status in India according to differences in religious beliefs.

5. While all progressive elements in Indian life, encouraged by the impulse of British culture, have been striving with considerable success to shatter the undesirable distinctions of caste, a serious attempt is being made to introduce a new caste system amongst the people of India in the region of politics, leading to mutual untouchability in political life and propaganda. The adoption of this policy will undo the great work that has been accomplished in India largely with the help of British administrators and teachers.

6. As pointed out by the Sikh Delegates, the investment of a majority community with the power to have a reserved majority in the legislature elected by a separate communal electorate, amounts to a perpetual domination by that community over the minorities, however important and capable they may be. The separatist schemes urged before the Committees of the Conference take no note of possible fluctuations in numerical proportions.

7. In Bengal, there has been greater amity between the Hindu and Muslim communities than elsewhere in India. There was no general demand or agitation on the part of Muslims in Bengal for separate communal electorates prior to the division of the electorates in 1909. When political parties were so divided, the protagonists of that policy stated that the need for it would disappear in a few years. The result has been different. If special privileges are once conceded to a community, it is futile to expect that community to surrender those privileges of its own free will. The basis of the constitution should, therefore, be even for all. While political doctrines and the rules of logic may be disregarded in framing constitutions, the rules of even-handed justice should be adhered to.

8. There is no problem of the Depressed Classes in Bengal in the same sense as the problem presents itself in Madras and in parts of the Bombay Presidency. Many classes that have never been, and many classes that are not at the present moment, untouchable are now putting forward a claim to be classed as "depressed" in order to obtain special political privileges. The fact that untouchability has broken up, never to come back again, will appear from the circumstances that amongst those who now choose to call themselves untouchables there are judges, legislators, professional men, and men in the Public Services.

In framing constitutions, it is easy to be misled by unreal difficulties. But if below the froth, the everyday life of the people is carefully looked into, these difficulties will disappear from view, and the problems facing the Conference will be found easy of solution. There is no need for dividing the Hindus into "touchables" and "untouchables."

9. The reservation of seats for the majority community and for certain minorities other than Hindus, and the allocation of the remaining seats in Bengal to the Hindu community will lead to a grave political injustice, for the Hindus of Bengal will then not only lose the weightage which they now have, but will receive a far smaller proportion of seats than they should have by reason of their number and importance.

ANNEXURE 16.

MEMORANDUM ON THE MINORITIES QUESTION.

By Sir Prabhashankar Pattani.

There is a sense in which the question of safeguards for minorities under the proposed new constitution has attracted an excessive amount of attention. Far too much has been heard of differences on details of minor importance, and too little of the broad general principles which must be applied if there is to be any satisfactory solution of this perplexing problem. Hence, I feel called upon as a member of the Round Table Conference to indicate the principles which, in my view, may be followed with advantage in reaching conclusions on the subject.

A primary consideration is that humanity is above nationality and nationality above community. A nation must make a national sacrifice if it is needed in the interest of humanity. That is the principle on which the League of Nations is founded.

Similarly, a community must make a communal sacrifice if this is asked in a reasonable spirit in the larger interest of a country. A divided nation is no nation, just as a divided community is no community. If India claims to be a nation suited to rule her own destiny, she will have first to evolve her nationhood. No section among us disputes the broad conclusion that our several communities will have to merge themselves into the Indian nation. The fact is that all Indians—Hindus, Muhammadans, Sikhs, etc.—must be Indians first and communalists afterwards. Politically, we must be only one Indian community. Socially, we may have our separate clubs, religiously, we may have our distinct faiths, culturally, we may still hold on to our time-worn ideas. But in the conditions of to-day we must breathe the air that is all about us. India is not going to have an atmosphere all her own in disregard of the democratic atmosphere of our time. Those who wish to live as human beings unenslaved by others, will have to keep pace with the progress of the human mind. There is no place to-day for the really conservative Brahmin; equally, no Mussulman can retain the idea that all are Kafirs who do not follow the teaching of the Kuran. The most orthodox upholders of their faith have to recognize that their different deities are only different names for the one Creator; that hidden under different colours of skin and myriad names we are all human beings.

In this spirit all sections of India will have to work together if they are to taste the fruits of independence. To be independent, one has first to acknowledge the independence of others. The man who would control others is only forging fetters for himself. It must be remembered that a community that wishes to get the better of other communities, soon comes to be divided into sub-communities, for at the root of all communal strife is self-interest, and that spirit will spread from the community to the individuals composing it. While self-interest divides, the spirit of renunciation unites. Those who give up share. Those that keep and monopolise create opposition; a fight ensues which results in loss to both sides.

Who then should make the first move towards reconciliation? The present day perverted idea is that the weak should go begging to the strong. That is not the way to peace. A grant grudgingly or unavoidably bestowed never reconciles, it only leaves a scar to be remembered and resented. For a true reconciliation, the strong should of their own accord propose generous terms to the smaller party. A sacrifice so made in securing friendship which is dear is no sacrifice in reality. Human comradeship is a possession which should be prized higher than any temporal sacrifices made in securing it. The Hindus, therefore, being the majority party, must first make approaches to the Muhammadans. To-day the Hindus are politically divided into many sub-communities. It was not so until recent years. The Muslims ruled our country for 800 years without communalism, as is shown by the fact that over 70 per cent. of the population is Hindu.

To-day, the obtainment of control of affairs by a community arises from the expectation of pushing forward communal interests, with the result that the subcastes wish to share the spoil. In trying to share by communal division they injure the commonwealth. Only an interest that can be obtained by common effort can be shared in common. In the endeavour to divide it into different portions we may lose its realisation as a whole.

A majority community should therefore first be united amongst themselves and then offer to the other communities a substantial share in the nationhood of India. A nation has its responsibilities as well as its rights. Rights are privileges; responsibilities are the price paid for them. The responsibilities and rights should counter-balance. The Mussulmans should have a fair share of both. Let them make their claim and then examine where the demands are exorbitant and where fair. Give them what is fair—or even a little more than what is fair, and resist the unfair. The price of peace has to be given. The majority can always afford to be generous. A sense of gratitude is a better bond than the reception of concrete benefits.

Politics is a vague science, but it is a vast one. It pertains to every activity of human existence. Domestic affairs are domestic politics, all economic questions are a part of political economy. Everything that is indeterminate connected with human affairs is politics. Therefore, the main function of organised society, which is the consummation of the happy living together of mankind, is given the name of "politics." The government of peoples is not an easy task, for people are a conglomeration of temperaments, and to devise a system of rule that will satisfy every member of the society is an impossible task. For a nation or a community to live fairly well together, they will have to achieve a common mentality. For a country to be successful in self-rule, a common political mentality higher than any individual mentality must develop. The collective mentality, if formed on the appreciation of the common good of the people as a whole, makes for a state of peace. This results in acquiescence in the formation of a constitution by which every individual in the higher interest of all will adapt his outlook to the common mind of the populace. India, to have a peaceful existence, freed from subordination to an alien power, will have to develop such a common political mentality. This pre-supposes a common alacrity for sacrifice. If, therefore, the communal differences are to be adjusted, all parties must be prepared to make reasonable sacrifices. Let us now examine what those sacrifices should be.

The most difficult problem is that of Hindu-Muslim relations. A good code of law and order, a constitution that will work without friction, the necessary measures of defence, freedom of individual vocation, non-interference with religious conscience—these and such other matters that are indisputably for the general welfare together, can be well provided for without the Hindu or Muslim having to make any real self-sacrifice.

If for nothing else, simply for the purpose of removing the fear, whether rightly or wrongly entertained, from the minds of the minority community, the majority community will have to accept some such solution.

Having proposed a constitution on these lines, we must consider in more detail in what special measure minority communities may desire to be specially protected from dominance by a majority community.

(*a*) The Law Courts to do equal justice to all, irrespective of community. Law is no respecter of persons.

(*b*) The army to defend the country.

(*c*) Each man to be free to follow what calling or profession he desires.

(*d*) Every man to be free to worship according to his conscience.

(*e*) Taxes to apply to all communities without discrimination.

(*f*) Medical relief and educational facilities to be open to all citizens.

(*g*) Equal opportunities of public service and state benefit to be guaranteed.

(*h*) Social customs and the respective culture of communities not to be interfered with by other communities.

These and such other principles are at the root of all democratic constitutions. But it is one thing to lay down principles and quite another for them to be worked up to in practice. Democracy is majority rule. Democracy decides by majority votes and, therefore, decisions may disregard even accepted principles. It is necessary, therefore, that fair treatment should be ensured to minorities on lines I now suggest.

(1) In any Bill bearing on a matter of religion or custom, a community by a two-thirds majority may claim and obtain exemption from the application of the Bill. When such minority community exercises the right it should not have the power to continue to take part in discussion of, or vote on, the measure.

(2) The Muhammadan community will have reserved for them one-third of the seats in the Central Legislature.

(3) The elections will be by joint electorate. This will promote better knowledge and appreciation of each other by the two communities.

(4) The provision of reserved seats should not be laid down in the constitution but should be agreed to between the two communities by way of a convention. The Hindus should bind themselves to see that the result of the Muhammadan elections bear out the agreed proportion. If the required number of Muhammadans are not returned the Hindus with the least votes will make room for the Muhammadans to the extent of their agreed number. Under this arrangement the majority community will awake to the necessity of meeting their Muhammadan brethern in a spirit of compromise. Failing an automatic adjustment of the elections in the right proportion, provision should be made for a stipulation to the same effect to be added to the constitution after an interval of five years from its inauguration. This is the effective way to turn the two communities into a democratic frame of mind. The responsibility placed on the Hindus by this scheme is great. The Muhammadans are only asked to trust the majority party. The majority party on the other hand will be on its trial as to the sincerity of its intentions in this regard. If it fails to keep its engagement, a constitutional provision in favour of the Muhammadans should be made.

(5) This reservations of seats for the Muhammadans need not preclude them from standing for other seats, and eventually if the Hindus accept the right kind of Muhammadan patriots, it is possible to hope that reservation of communal seats may disappear entirely. At the same time, it would be well if the Muhammadans can be persuaded to allow facilities for the election of some non-Muhammadans for Muhammadan reserved seats. After all the Muhammadan is not elected because he is a Muslim but because of his advocacy of the Muhammadan interest. The same principle would apply to a Muhammadan standing for a non-Muhammadan seat, or to a Hindu standing for a Muslim seat. The great object in view is to bring the two communities so close together politically that out of this contact there may arise a mutual trust which may bring about a common Indian nationality free from all religious or communal aloofness.

(6) The public services will go by merit. Competitive examinations should be introduced for every branch of service, using that term in a wide sense to include civil services, subordinate departmental services, municipal and local board appointments, engineering, medical and military services. All communities must compete for them and the posts will go by the number of marks.

(7) It must be admitted, however, that a backward community with limited resources for the education of its members cannot compete on equal terms with communities possessing ampler resources and better equipped by the fact of their past constant use of educational and other developing facilities. Backward communities must, therefore, be provided with wider and more special facilities for education. This can be done by larger grants to their schools where they are at any disadvantage, stipends for higher education, scholarships for special branches of education such as medical, electrical, and engineering courses, etc.

(8) Yet in spite of the facilities mentioned in (7) above, the backward community candidates may fail to enter the service in proportion to their number in the population and naturally they would prefer to have some special provision made at least for the first few years. It may, therefore, be provided that a certain percentage in the service be fixed for the minority community. But to deserve appointment the candidate must have passed the competitive examination required for that service, although he may not have obtained sufficiently high marks to bring him amongst the successful candidates. For example, suppose there are twenty vacancies in a department, and the percentage fixed for the minority community is one-third (*viz.* 6) and that amongst the first twenty of highest marks there are only three Muhammadans. The remaining three should then be taken from Muhammadan candidates next below the successful candidates. It should at the same time be provided in the interest of efficiency, that no candidate who has failed to secure at least one-third of the total number of marks or such other total as may be fixed by a Public Service Commission should be considered fit for appointment. Thus will be ensured (1) a proper representation in the srevice of the minority community and (2) efficiency of the service. On the latter depends the good government of the country and surely the interests of the country as a whole must have precedence over the interest of any individual community.

All outstanding needs of a community can thus be met by special concessions; but so far as possible, these concessions should be temporary. I do not mean thereby that the community for whom these concessions are made is to be deprived of them at the end of a fixed period, but that methods should be devised to raise the community within a fixed period to come up to the standard of equipment and efficiency of the majority community. The process should be that of levelling up the backward, not of levelling down the advanced, communities.

It should be clearly undertsood that a caste or sub-section is not taken in anything I have written as a community. The Hindu community, for example, comprises many castes—Brahmins, Banias, non-Brahmins, Untouchables, etc. Castes and sub-sections are the bane of India. Most English writers have denounced the caste system and yet curiously enough, the Simon Commission wished in effect, by the method of separate electorates, to perpetuate politically in the constitution the caste system! The facts, no doubt, have to be faced but the measures devised for that purpose should be such as to mould facts into harmony and not to perpetuate objectionable features, thereby aggravating difficulties in the way of welding together an undivided nation, which alone can make for successful democratic government. By all means provide for the partially developed communities, but let the provision be such as will raise them to the stature of grown-up communities, and not such as would keep them for ever in the position of mere pupilage.

Neither do religions always make communities. The Hindu conglomeration is all-embracing. The Vaishnavites, Shaivites, the Shaktas, the Jains have varied religious conceptions, but are all classed as Hindus. The political mentality of the Hindu of these and other sub-sections is identical.

These elements in their own interest and in the greater interest of the country, would do well to combine to make one all-embracing Hindu community for national purposes.

The Muslims are a distinct people. Their religion, culture, customs, temperament, outlook on life, and outlook on self and others is different from that of the Hindu. Thus the Hindu and his national brother, the Mussulman, are distinct communities. It follows that they will have to make reciprocal concessions to come together for national ends. I have made in this paper suggestions for such a *rapprochement*. Any constructive criticism of this scheme and alternative suggestions on these lines will be welcome, for my aim is to find a way of accommodation and peace, in pursuit of the great ideal of the eventual unification of the Indian people.

The foregoing proposals apply to the Central Government Constitution. The following are my suggestions for meeting the claims of minorities in respect to the Provinces:—

(*a*) Reserved seats in proportion to population.

(*b*) Competitive examinations for services with provisions similar to those in the Central Government.

(*c*) Representation in services in proportion to population.

(*d*) A majority community cannot reasonably claim reserved seats, for it has the means of securing at least its requisite number.

(*e*) The fight between the sub-communities of the main community is not a national fight and should not be provided for in the constitution.

As the Hindu religion is one and yet the castes are many, so is the Muhammadan religion one and yet there are many tribes among the Muslims—Shias, Sunnis, Borahs, Pathans, Memons, Khojas, etc. It is conceivable that these several denominations may, on the analogy of the Hindus separatists of recent growth, ask for separate electorates. It behoves the Hindus to wipe out the exclusive attitude of caste and it equally behoves the Muhammadans to ask only for temporary concessions which should automatically disappear with the growth of true nationality.

The religious distinctions will remain, a certain individuality in culture and customs will persist, and differences of temperament will continue. Yet there is no reason why the two great communities of India should not bring a common purpose to the affairs of the country as a whole. India cannot stand outside the world of to-day; for good or evil the world is in the grip of democracy, and India cannot be an exception. It may be that dictatorship will follow as it has under various disguises in some countries of the West. But our present concern is with the world at large on the common platform of democratic principle.

The Muhammadans think that they have a good opportunity for a bargain. The Hindus must make a fair compromise if they are to attain a comradeship which may promote the ultimate object of the combined nationality that alone can make for self-government. If the compromise is really inimical to such a chance it would be better to refuse to come to terms and suffer the consequences of rupture, for that might induce the Muhammadans to realize, at a later stage at least, the disadvantage of a divided house. After all, Muhammadans always tell us that they share the Hindu desire for a self-governed India.

Difficulties are to be met, confronted, and overcome. They should not be used as an excuse for keeping India from the path of advancement. In search for a temporary or momentary advantage, one may lose the substance. It is better to wait and hope than to surrender a principle and accept a doubtful benefit. He gathers ripe fruits who waits for the season.

November 9th, 1931.

ANNEXURE 17.

MEMORANDUM ON HEADS OF DISCUSSION, NOS. V, VI, VII, AND VIII.

By Sir Prabhashankar Pattani.

HEAD V.

THE MINISTRY AND ITS RELATIONS WITH THE LEGISLATURE.

(i) *Proceeding on the basis (see paragraph 9 of this sub-Committee's Second Report), that Executive power and authority will vest in the Crown represented by the Governor-General, how are the Governor-General's Ministers to be appointed? Is there necessarily to be a Prime Minister, and if so, is the selection and appointment of the other Ministers to be made invariably, and as a constitutional necessity, through him?*

The Executive Power and authority will vest in the Crown represented by the Governor-General. There will be a Ministry to advise the Governor-General, headed by the Prime Minister, through whom other Ministers will be appointed by the Governor-General as a constitutional necessity.

(ii) *What is to be the number of the Federal Ministers, or if no number is to be prescribed by the constitution, by what authority is the number in practice to be determined and modified?*

Ordinarily, there should be no number of the Federal Ministry prescribed by the constitution; but as we are now starting with a new constitution, it would be well to lay down the number as necessitated by the convenient grouping of subjects within the orbit of Federal functions. The list of subjects provisionally drawn up last year would suggest the following portfolios:—

(1) Army and Foreign Relations.

(2) Finance.

(3) Commerce and Industry (including Communications).

(4) Law (including Legislative Department).

(5) General Departments.

The number of Federal Ministers may be modified in the light of future needs, and the authority for additions and alterations will ordinarily be the Ministry, guided as it should be by the Legislature that will have to sanction the cost of the same.

(iii) *Is provision to be made for the representation in the Council of Ministers of:—*

(a) the States and British India respectively, and/or

(b) of different classes, communities or interests; if so, of what classes, communities or interests?

The constitution should make no provision of a distinguishing character, for the purpose of inclusion in the Federal Ministry, of the representatives of particular interests—the States, British India, or any classes or communities, as the insertion of any such statutory clause, apart from the impracticability of satisfying all varieties of separate interests as at present known, will make little for the unity, vigour and cohesion—so essential in all Executive Bodies. In practice, however, as every formation of the Ministry will be based on the administrative talents of the respective Members of the Ministry as well as on their qualities of leadership as illustrated in the following they can command in the Legislature, the majority at the Head of Government at any time will include in the Ministry a sufficient representation of interests harmonizing with the policy of the day. It is only by this means that the country can move healthily in the direction of democratic national government, as distinguished from government of stereotyped interests and communities.

(iv) *If there are to be such representative Ministers, are their respective numbers to be prescribed either in the constitution itself or by instructions to the Governor-General?*

This question does not arise in view of the opinion expressed in (iii) above.

(v) (*a*) *In what sense are Ministers to be responsible to the Legislature?*
(*b*) *Is this responsibility to be collective? And if so,*
(*c*) *Is such collective responsibility to be recognised and expressed in the constitution?*

(*a*) Ministers will be responsible to the Legislature in the same way as at Westminister, subject to the provision of a no-confidence vote, as detailed in Section 7 (*b*) below. Fundamentally they owe their existence in office to the support of the majority of the Legislature. The relationship between the Ministry and the Legislature is of a reciprocal character. The Ministers will guide the Legislature and will, in turn, allow themselves to be guided by the sense of the Legislature. From their position of authority and intimate knowledge of the working of the machinery of Government, they will give a lead to the country and their day-to-day contact with the Legislature will enable them to appreciate how far the Legislature can respond to their measures.

(*b*) and (*c*) The responsibility of the Ministry to the Legislature is to be collective, and this collective nature of the responsibility should be recognized and expressed in the constitution. Unless responsibility is collective, the Ministry cannot govern as a united body. Collective responsibility alone will make for unity and steady enforcement of policy. Collective responsibility also involves collective fall, and it is the recognition of this fact that lends stability to the Ministry, for collective dismissal of the Ministry is not likely to be lightly conceived by the Legislature. It is easy to break an individual Minister; it is not so easy to defeat a whole Ministry.

(vi) *What is to be the relationship of the persons appointed by the Governor-General to assist him in the administration of the "reserved" portfolios to—*

(a) the legislature?—Are they, e.g., *to be or become members of one or other Chamber with the usual rights as such to speak and vote, or are they merely to have the right to speak in either Chamber, with no power to vote?*

(b) The Council of Ministers?—Are they, e.g., *to attend all Meetings of Ministers or only when directed to do so by the Governor-General?*

(*a*) The relationship of the persons appointed by the Governor-General to assist him in the administration of the "Reserved" portfolios to the Legislature will be similar to the relationship of any other Ministers, that is, they will have the usual right, as Members of either House, to speak and vote.

(*b*) There should be no separate Council of Ministers of "Reserved" Departments as distinct from other Ministers of the Cabinet. They will be in charge of the special "Reserved" portfolios, but they will attend all meetings of the Cabinet. Similarly, the whole Cabinet will have an advisory voice in the consideration of matters connected with the "Reserved" Departments, the final decision of which may, however, lie with the Governor-General. The coalescing of the two parts of the administration will be the toughest problem of the Federal Government, the solution of which can be had only in the frequent coming together for consultation of all Ministers—"Reserved" and others—under the Presidency of the Prime Minister, as is the case in any unitary Cabinet. Routine matters will, of course, be dealt with by the Member in charge of each Department.

(vii) *Could the constitution itself, as distinct from constitutional usage and practice, appropriately purport to prescribe and define—*

(a) The circumstances in which a Ministry is to be held to retain or to have lost the confidence of the Legislature, and in which it is justified or not justified in retaining office?

(b) The circumstances in which "in the interests of stability an adverse vote should not . . . necessarily involve the resignation of a Ministry" (Second Report of Federal Structure sub-Committee—Section 35)—having regard to the fact that, in general, in Parliamentary systems of Government an adverse vote does not necessarily involve a Ministry's resignation?

(c) Whether or not a Ministry would be justified in retaining office if on any given matter they are accorded the support of one Chamber but denied that of the other?

(a) This must be left to the discretion of the Ministry, and the Ministry in special circumstances may do well to be guided by the Governor-General.

(b) An adverse vote should not necessarily involve the resignation of a Ministry. The constitution should provide for a distinct clause to the effect that a direct vote of no-confidence in the Ministry alone will force the resignation of the Ministry. It must be recognised at the same time that although the requisite percentage of votes in favour of a no-confidence motion may not be available, frequent adverse votes by bare majority should induce resignation because of the fact that constant hindrances may vitiate the smooth working of the Government, and it would be in the interest both of the country and the Ministry that there should be a change. Where a Ministry insists upon remaining in power in spite of constant defeats, the Governor-General will have the power, under the Instrument of Instructions, to advise the Ministry to resign or to dissolve the House on the advice of the Prime Minister as circumstances may demand.

(c) In the circumstance, the vote of a joint session of both Houses should be invited; and in the event of a direct vote of censure not maturing, the question whether or not a Ministry would be justified in retaining office, if on any given matter the joint session refuses to support the Ministry, should be left to the Cabinet as detailed in (b) above.

(viii) *Would stability be secured in practice by an express provision in the constitution that a vote of no-confidence in the Ministry is not effective unless it is carried by a vote of not less than two-thirds (or some other arbitrarily fixed proportion) of the members present and voting (or of the total membership of one or both Chambers)?*

Yes. Stability will be ensured if it is provided that a vote of no-confidence in the Ministry will not be effective unless it is carried by a vote of not less than two-thirds of the Members of the Legislature present, both houses voting together.

(ix) *Is it possible to secure, without impairing the unity of the Legislature, the expressed desire of the States that their representatives should take no part in the discussion of British-Indian affairs?*

If so, would this be satisfactorily effected by providing in the constitution that all purely British-Indian matters should stand referred to a Committee consisting of all the British-Indian representatives or to a standing committee of them?

Would it be possible to exclude the representatives of the States from voting on any such British-Indian matter which the Ministry, having experienced or anticipating an adverse decision from the British-Indian representatives, decided to bring before the Legislature as a whole as a matter of confidence?

Yes. The express desire of the States that their representatives should take no part in the discussion of British-Indian affairs should be expressly provided for in the constitution. Interference in the internal affairs of the States could only be prevented thus. All purely British-Indian matters should stand referred to a Committee consisting of all the British-Indian representatives. This provision will apply to both the Chambers. The representatives of the States cannot, however, be excluded from voting when a direct motion of no-confidence is to be brought forward for the reason that they have an influence in the formation of the Ministry; but they should not take part in matters of exclusively British-Indian concern on

the anticipation that from the discussion may arise the question of want of confidence. The "no-confidence" resolution should be a definite motion, separately brought forward.

Head VI.

Distribution of Legislative Powers between the Federal and Provincial Legislatures: effect in the States of Legislation relating to Federal Subjects.

(i) *Is the constitution to declare in terms that the legislative powers of the Federal Legislature and of the Provincial Legislature are confined respectively to the spheres of Federal (and Central) subjects and Provincial subjects?*

(Note: Under the present Government of India Act, it will be remembered, the combined effect of Sections 65, and 80a, may be broadly stated as being that there is no statutory distinction between the extent of the legislative power of the Central Legislature and the Legislature of a Province, except that the competence of the latter does not extend beyond the provincial boundaries. While, therefore, there are provisions designed to ensure that without the previous assent of the Governor-General, neither body shall invade the sphere assigned to the other by the allocation of subjects under the Devolution Rules, the position remains as it was before the Act of 1919, that no Act passed by either is challengeable on the ground that it could be validly enacted only by the other. An affirmative answer to this question would, therefore, alter this position.)*

Yes.

Note: The autonomy of Provinces postulates this distinction. If a case arises wherein the respective authority of one or the other is in doubt, the Federal Government will, in the first instance, decide whether the sphere of influence in regard to that particular matter is Federal or Provincial, provided that the Province will have the option of taking the matter to the Federal Court if it so desired. The distinction becomes all the more necessary because of the nature of sovereign autonomy of the Indian States.

(ii) *Where are the residual legislative powers to lie?*

The residual legislative powers should lie with the Federal Government in regard to Provinces but not with regard to the Indian States. The Provinces so far have been under the control of the Unitary Central Government, who will under the new constitution release certain powers in favour of the Provinces. The Provinces, in a way, would be grantees, and cannot, therefore, claim residual powers. In the case of the States, it is the States that delegate certain specified authority to the Crown only for the specific purpose of bringing about federation; and being the reservoir of inherent internal sovereignty they are entitled to retain all the residual powers.

(iii) Is it to be taken as accepted doctrine that "it is of the essence of a federal constitution that the enactments of the Federal Legislature acting within its legal scope should have full force and effect throughout all units comprised in the Federation" (First Report of Federal Structure sub-Committee, Section 8) and that consequently Acts of the Federal Legislature relating to Federal Subjects will apply proprio vigore *to the territory of the States' Members of the Federation in the same way and to the same extent as they will apply to the Provinces?*

Yes. Enactments of the Federal Legislature acting within its legal scope should ordinarily have full force and effect throughout all units comprising the federation. This will apply to the Provinces without doubt. In the case of the States, however, if they show reluctance in the matter, the remedy is for them to adopt the federal laws as their own without any

* Section 67 (2), Clauses (i), (ii), and (iii).

modification, so that there may be no dissimilarity in the application of Federal Legislation.

(iv) *Even if the answer to question* (i) *is in general in the affirmative, are the Federal and Provincial Legislatures to retain in any respect concurrent powers of Legislation? If so, in what respects or in relation to what subjects (or aspects of subjects)?*

Yes; the concurrent powers of legislation will chiefly be in relation to:—

(1) Subjects on which it is constitutionally valid for both legislatures to pass Laws, *e.g.*, Laws relating to bankruptcy, property, civil and criminal law procedure—or provincial trade, traffic and communications.

(2) Matters of a social or " welfare " nature which, although provincial, have an all-India importance requiring Federal legislation, *e.g.*, marriage laws, prohibition of intoxicants, conditions of labour classes in relation to housing, insurance, etc.

(v) *If on any matter there are to be concurrent powers are federal laws to prevail over provincial laws on the same subject?*

Yes.

(vi) *Is the question of* ultra vires *legislation to be left exclusively to the Courts, or is any machinery practicable which would prevent the question of* ultra vires *arising or of restricting inconvenience when it does arise* [cf. *Government of India Act, Section 84 (2) last eight lines*].

The question of *ultra vires* legislation should be left exclusively to the Courts; but it may be agreed that the Federal Government with regard to Federal Legislation, and the Central Government with regard to Central Legislation, may, in the first instance, decide any question of this nature, leaving always to the other party concerned freedom to take the case to the Courts.

Head VII.

Administrative relations between the Federal Government, the States, and the Provinces.

(i) *In relation to Federal Subjects, what precisely is to be the range of of administrative authority exercisable by the Federal Government over the units of the Federation?*

The range of administrative authority exercisable by the Federal Government over the units of the federation in relation to federal subjects should be full, but it is suggested that in the interest of smooth and frictionless working, the units may exercise this authority as agents of the Federal Government.

(ii) *In relation to Federal Subjects, is any distinction to be drawn between the extent of the authority exercisable by the Federal Government over the Provincial Governments on the one hand and the States Governments on the other?*

If it is intended that the Federal Government, by a direct machinery, will exercise authority in relation to federal subjects in the Provinces, the States would insist that they should be left to exercise this authority themselves as agents of the Federal Government. They may not object to a proviso that the Federal Government may detail an officer to exercise that authority in a State that may fail to carry out this administrative obligation. The question whether a particular State has failed in its obligation should be left to the Federal Court.

(iii) *In relation to Central Subjects, is the authority exercisable by the Federal Government over Provincial Government to be the same in extent and character as that exercisable over the Provinces in relation to Federal Subjects?*

Yes.

(iv) *In relation to Provincial Subjects, is the Federal Government to be empowered to exercise any supervision and/or control over the administration of these subjects by Provincial Governments? If so, over what subjects or classes of subjects and/or for what purposes?*

So far as possible there should be no supervision and control by the Federal Government in relation to Provincial subjects. In relation to the internal affairs of the States, the Federal Government will have nothing to do. The question of supervision or control should really arise only in cases of inter-provincial differences.

Head VIII.

The Federal Court.

(i) *Should members of the Federal Court be appointed by the Crown and on what tenure?*

All judges will be appointed by the Governor-General on the advice of the Executive Council.

Judges will be appointed without limit of time, and will not be removable before the retiring age except by resolution of both houses, and that only on charges.

(ii) *Should the Court have an original and an appellate jurisdiction, or only an appellate?*

Only Appellate Jurisdiction.

(iii) *Should the Court have an exclusive original jurisdiction,* e.g., *in the following matters (non-justiciable matters being excluded):*

(a) *disputes between the Federation and a State or a Province in any matter involving the interpretation of the constitution;*

(b) *disputes between two States, two Provinces, or a State and a Province, in any matter involving the interpretation of the constitution.*

(c) *the interpretation of agreements between the Federal Government and a State or a Province, or between two States or two Provinces, or between a State and a Province, and any question arising thereunder.*

Yes, in regard to (a), (b) and (c).

(iv) *Should the Court have an exclusive appellate jurisdiction from State Courts and Provincial High Courts,* e.g., *in any matter involving the interpretation of the constitution.*

Yes—in any matter involving the interpretation of the constitution.

(v) *Should provision be made for special references by the Governor-General to the Court as under Section 4 of the Judicial Committee Act, 1833?*

Yes.

(vi) *Should there be a right of appeal from the Federal Court to the Privy Council as of right or by leave of the Court, the right of the Crown to grant special leave to appeal to be preserved in all cases?*

(vii) *What provision should be made for the enforcement of the judgments of the Courts in the States and in the Provinces respectively?*

No appeal to the Privy Council, but the right of the Crown to grant special leave to appeal to be preserved in all cases. In cases of failure of enforcement of the judgments of the Courts in the States and in the Provinces respectively, the Federal Government will take measures to enforce them. The question whether or not there has been a failure being one of fact and, therefore, a justiciable matter, will be within the competence of the Federal Court.

ANNEXURE 18.

NOTE ON THE POSITION OF THE SO-CALLED SMALLER STATES.

By the Raja of Korea.

The so-called smaller States have a feeling of genuine apprehension that in the Federal Houses of small sizes their interests may not receive adequate and legitimate insurance because of their meagre strength in them. In regard to the Upper House where a variety of indefinite factors will govern the question of the apportionment of seats between the States they feel that a small House will not afford them sufficient scope for their proper representation. The paucity of seats and the priority of the claims of the bigger princes will hardly make it possible for them to have such a numerical strength as they may be entitled to in consideration of their resources and general importance. This anxiety is not so actuate in the case of the Lower House, where a definite principle of representation has been agreed upon, namely, population. Nevertheless, a larger Lower House than 350 would also be a necessity if the various interests comprising the so-called lesser States' groups are to receive their fair representation, and also for maintaining the requisite balance in the relative strength of the two Houses, when the Upper House is enlarged.

In view of the difficulty in the distribution of seats in a small House, a claim has been made by H. H. the Chief Sahib of Sangli, for 150 seats for the States' representation in the Upper House, and I entirely associate myself with it. The difficulty of making adequate provision for special constituencies in small Houses has also been realised by some of the British Indian delegates, and they too have similarly urged the necessity and desirability of having comparatively larger Houses.

Allotment of 125 seats for all the States will hardly meet the requirements of the situation, much less will the provision of 100 seats as suggested by some. This figure of 125 has been conceived under the belief that the model of the constitution of the Chamber of Princes will also prove suitable and acceptable to all concerned in the framing of the structure of the Upper Federal House. It is sought to provide 109 seats to the permanent members who have at present direct representation in their own right, and 12 to the five groups in the second class who are represented through representative members, and 4 to the third class group comprising estates and jagirs who have at present no representation whatsoever.

It may be submitted here that the constitution of the Chamber of Princes does not appear to be founded on a just and equitable basis so far as the claim of the first few big States and some of the second class States are concerned. As a result of the existence of this improper classification some of the bigger States have persistently disassociated themselves from the Chamber, and the smaller States have also been protesting against their exclusion from the Chamber in their own right, in consequence of the imposition of invidious distinctions and unfair discriminations. Several members of the Chamber of Princes in their own right have been admitted into the Chamber primarily in consideration of their salutes. Some have received permanent representation in virtue of their enjoying both of these qualifications. In respect of this class of States who constitute the major bulk of the Chamber, the smaller States have nothing to say, but as regards those whose eligibility to permanent representation in the Chamber is based merely on salutes for so-called higher degree of internal autonomy, which in many cases is not at all of a superior order than that possessed by many of the second class States, it is felt that the discrimination is unfair, specially where the absence of salute in the case of some of the smaller States is counterbalanced by greater resources, bigger area and larger population.

Salutes it is submitted should not be the sole criterion or even the principle criterion for individual representation in the Federal Upper House on the analogy of the Chamber constitution. These are more associated with the person or house of the ruler, and they are no index to the character of

the State which is more appropriately represented by other factors such as resources, area and population, etc.

Many second class States as I have submitted, enjoy internal autonomy which is in no way inferior to that enjoyed by the smaller States in the first class, and where there exist differences they occur not so much owing to the inherent character of the State or States concerned, but to the varying Policies adopted by the different Local Governments in recognising the status and power of the States under them.

As a result of the recognition of the existing unfair discriminations between some of the first and second class States in the Chamber, a State was recently promoted from the second class to the first class, and further investigations are being instituted by the Government to ascertain what other States are labouring under a similar injustice and to rectify their anomalous positions. In consequence of this enquiry several States of the second class are expected to be accorded their rightful position in the first class. These possible promotions have to be kept in view, and bearing in mind the fact that the present strength of 12 representatives of the smaller States which is hardly just or adequate, will need enhancement and that representation will have to be provided for the third class group of Estates, I submit that the case for a larger House is obvious.

The anomalies in the constitution of the Chamber of Princes are manifest, and their reproduction in the Federal Upper House will be ruinous to the interests and just aspirations of the smaller States. Here I wish to point out that whereas the Chamber of Princes is a consultative and advisory body, the Federal Chambers will be legislative bodies, while the smaller States could, in the Chamber of Princes, endure the injustices embodied in its constitution and its consequences, they can hardly afford to do this in the case of a Legislative Chamber, whose decisions will have a vital and far reaching effect on their interests.

However, as the apportionment of seats between the States *inter se* is proposed to be taken up in the first instance by the Chamber, I do not propose to expatiate on this subject any further than is necessary to clearly state the present position in regard to the Chamber of Princes, and mention the evils its constitution harbours. It is possible though very unlikely, that a satisfactory solution may be arrived at without the intervention of an outside agency.

In connection with the question of vacant seats consequent on the decision of some of the States not to enter the Federation, I beg to submit that some of the smaller States are opposed to the idea of the seats allotted to them and remaining vacant being occupied, even for the time being, by other States or groups of States. This may lead to consequences which may be prejudicial to their interests.

For the present my claim on behalf of the smaller States would be for a comparatively larger House which would provide the States with 150 seats. The Lower House will also need a corresponding increase for the maintenance of the necessary balance between the two Houses, and for preventing the constituencies from becoming unmanageable and inconveniently large in their size.

November 2nd, 1931.

ANNEXURE 19.

REPRESENTATION OF THE SMALLER STATES.

Memorandum by the Raja of Sarila.

I feel it incumbent upon me in the interests of the smaller States, which I have the honour to represent at the Round Table Conference, to make known the broad and tentative views held by me and other States in relation to the vexed question of representation in the Federal Legislature.

It is a source of satisfaction to us that it was found possible this year to secure representation for the smaller States at the Conference, the exclusion of which on the last occasion was the cause of much misgiving. Now that the proceedings of the last sitting of the Federal Structure Committee have been made available, it is possible to offer an informed criticism from our angle of vision; indeed, since they were published, we have been at pains to give them most careful and thoughtful study. While very desirous of not proving in any way an obstacle in the solution of so delicate a problem, which so largely concerns the future welfare of India as a whole, we must admit that we are equally zealous to secure proper and adequate safeguards for ourselves at a time when sands are shifting so rapidly.

The problem may for convenience be stated under three main heads:—

(1) Classification of the States on the basis of sovereignty;

(2) The means by which the homogeneity of the States might be secured;

(3) The best method of securing an adequate measure of representation for all the States.

It is of interest here to note a fact which, perhaps, is sometimes lost sight of, namely, that many of the so-called smaller States are autonomous in themselves. Disregarding for the purpose of this examination those varieties and complexities of treaties, engagements, and Sanads, which admittedly are difficult of classification, all the States, big and small, in categories now referred to as class I or II, enjoy the same degree of guaranteed security from external interference. The Paramount Power, too, owes them obligations, as it does to those States, larger perhaps, now classified as class I States, or even those in class I, which are smaller than those in class II, which enjoy the right of membership of the Chamber of Princes in their own right. In addition to this the class II States, as they are called, are sovereign in their own territories and have powers of legislation and taxation. Furthermore, some of them are actually held in higher esteem of the Crown than some of those States in classification I, as may easily be discovered by a glance at the provincial list of precedence. The Indian States Committee, over which Sir Harcourt Butler presided, created this distinction to the disappointment of the States not members of the Chamber of Princes. If we look into the history of the States' relations with the Crown and their political significance, we will find that no discrimination or differentiation was suffered from the time, when salutes, the prerogative of the Crown, were fixed in 1858, until such a recent date as 1921, when the Chamber of Princes was inaugurated. At the Chiefs' Conference, held at Delhi in 1919, Lord Chelmsford actually made the observation that, in his own and Mr. Montagu's opinion, " it would be unwise to base upon the salute list, as it stood, any fundamental distinctions between the more important States and the remainder, but, that, owing to the extreme difficulty of defining with precision the full powers of internal administration and the embarrassment which must be caused by applying the test when formulated in individual cases, after all, the wisest course would be to base the distinction primarily on the salute basis ". Here then lies the crux of the differentiation which has grown up and created for the smaller States a position historically untenable; this position was grievously aggravated by the Indian States Committee, which made the line of demarcation even wider.

Then there are the anomalies which have crept into the Chamber of Princes as at present organised. The States classified as class II States by the Indian States Committee are 126, of varying size and enjoying different degrees of sovereignty and status. These 126 States have been given 12 representatives in a body composed of 121 members, which obviously is very scanty representation and may almost be said to prove the inadequacy of the present Chamber of Princes as a truly representative body. For example, 32 States of Central India are entitled to one representative only. Besides this disability there is another also, which hinders the smaller States from the enjoyment of the privilege of being represented on the

standing Committee of the Chamber of Princes. The Chamber, however, is only a consultative body and these limitations do not affect the smaller States very materially, but the Federal Legislature will be a different kind of organisation with greater functional capacities and such handicaps and disqualifications are likely to prove a real hardship. The criteria of representation operative in the Chamber of Princes must be abandoned and classification on the basis of status and sovereignty should be adopted, irrespective of salute, according to the list of precedence. Although the possibility of recognising or attaining equality of sovereign powers may be remote, it is submitted that it is within the scope of practical politics to assure " equity of representation ".

There is not the slightest doubt that the interests of the Order of Princes, of States big as well as small, are homogeneous and there is a common denominator of sovereignty. The desire and necessity to safeguard that sovereignty is also common, and what is desired is that stress be laid on this unity of interests and position rather than on the arbitrarily drawn distinctions which have grown up.

As regards (2) I am of the definite opinion that it will be in the best interests of the States and of India as a whole that the States join the Federation not consecutively but collectively. The reasons in favour of this proposal have been adduced above and I need not further dilate upon them. What I want to emphasise here is the unanimity that would make the States one if developed on pure and simple lines, enabling the problem to be solved, and allowing the whole order to play a valuable part in the scheme of things.

The smaller States, as has been said already, do also cherish the degree of sovereignty possessed by themselves and they are making a proportional sacrifice in the interest of the whole; for this reason there can be no question but that they should desire and expect an effective voice in the counsels of the legislature which is ultimately to control their destinies. There is no reason why their interests should not be safeguarded. If under any scheme equity can be assured to the smaller States there can be little doubt that they would be advised to co-operate. There remains for brief mention the means of securing uniformity of representation of all units.

The means by which this can be secured is that all the States in Class I, supplemented by those in Class II, at present, whose status entitles them to be elevated to this category, together with those eligible to send representative members, would, acting together, be enabled to consider a panel of names prepared by the whole body and to vote thereon as separate entities. The bigger States need in this event suffer no qualms or anxieties nor need they have any occasion to be apprehensive as to their own position, as it will be in the interests of each unit to see that the best talent available, whether it be from among the bigger States or the smaller States, should secure election to the Federal legislature in the interests of the Order as a whole. Men of sound views and mature experience would naturally command the greatest number of votes. The fact of belonging to a bigger or smaller State should in such circumstances be no handicap or disqualification, and only thus can the truly representative character of the Order be assured. In addition to this they might be guaranteed a number of permanent seats which would necessarily be filled by persons from the particular State or States. This would ensure them due representation in the Federal Legislature, while it will at the same time provide for the smaller States an equitable proportion and will create a much needed cohesion among all the States.

The consent of the smaller States to any scheme of Federation is conditional on their securing this equity of representation, or at least the adoption of these principles substantially.

I have set out these views for consideration, and speaking on behalf of the smaller States and for those Estates, which are not included in the categories discussed above, I make bold to press for adequate safeguards and the fullest degree of representation in any constitutional programme

to be adopted for all collectively. We are eager to maintain the individuality of the Estates as well, and would not like them to be grouped with any big State or with British India in any manner that would efface their individuality, and there would probably be no objection to these very small Estates being also given a measure of representation.

I am sure that these views will sound a sympathetic chord in the hearts of my fellow delegates at the Round Table Conference both from the Indian States and British India and that the justice of our claims will be recognised by all concerned.

14th October, 1931.

ANNEXURE 20.

NOTE ON THE POSITION OF THE SUBJECTS OF INDIAN STATES IN THE FUTURE CONSTITUTION OF INDIA.

By Diwan Bahadur M. Ramachandra Rao.

In the Third Report of the Federal Structure Committee an attempt has been made to fill in the outline of the Federal Constitution for Greater India sketched in the Second Report of the sub-Committee dated 15th January, 1931. In a consideration of this Report, I should like to invite the attention of the members of this Conference to a matter of fundamental importance. The sub-committee did not give any attention to the position of the people of the Indian States in the new constitution and the necessary safeguards for protecting their rights and liberties. In a memorandum which was circulated by me during the sittings, of the First Session of the India Round Table Conference (printed at pages 183—186 of the Report of the Minorities sub-Committee), I drew the attention of the Conference to this subject and contended that a Federal Constitution for the whole of India must materially affect the status and position of the people of the Indian States. I also suggested that the rights and obligations of the citizens of the Federating States and of British Indian Provinces to the new Federal Government of United India should be carefully examined and clearly defined, and that certain fundamental rights should be embodied in the constitution and also that the necessary judicial machinery for enforcing these rights should be set up. During the Plenary Session of the Conference held in January last, I also pressed upon the attention of the Conference the desirability of making provision for the representation of the people of the States in the Federal Legislature of the future, and suggested ways and means for the purpose. Their Highnesses the Maharajahs of Bikaner and Kashmir, and His Highness the Newab of Bhopal were pleased to make certain observations in their speeches in January last to the effect that fundamental rights were already possessed by the people of their States, and nothing was dearer of their hearts than to take care of the interests of their own people. As regards representation in the Federal Legislature, the Report of the Federal Structure sub-Committee dated 15th January, 1931, expressly stated that the selection of the representatives of the Indian States in the future Indian Legislature was entirely a matter for the rulers of the States. The suggestion made by me during the Plenary Session that the people of the States should be represented in the Legislatures by some method of election did not elicit any response from the members of the Indian States Delegation.

2. I venture, therefore, to again invite the attention of the members of the Conference to the fact that the Federal Constitution for India, as set out in the present Report, has been framed without the representatives of the people of the Indian States being heard in regard to the new constitutional structure proposed therein. It cannot be seriously contended that the people of the Indian States have no interest or should have no voice in the evolution of a new constitutional tie between British India and

the Indian States based upon the federal principle. Every Minority Community, however small, belonging to British India has been represented at this Conference, and it is most unfortunate that the British Government and the Government of India should not have made provision for the representation of seventy million people of the Indian States at this Conference, and that the representatives of the people of the Indian States have not been placed in a position to urge their own case at this Conference. From the point of view of British India, it is equally essential that the new federal constitution should be set up with the general goodwill and concurrence of the people of all the federating units. Moreover, the members of the Federal Structure sub-Committee who are parties to the Second Report expressed the opinion that their Report left open many points which have to be settled after public opinion in India has had an opportunity of expressing itself upon them, in order that the completed constitution may be based on the largest measure of public approval in India. In these circumstances, I feel it incumbent that I should invite the attention of this Conference to such public opinion as has found expression among the people of the Indian States in regard to the new constitutional structure discussed by the Federal Structure Committee. During the last few months several meetings of the people of the Indian States have been held in various parts of the country, and resolutions have been passed in representative conferences as to how the people of the States should be protected in a new constitution. I beg to invite the attention of this Conference specially to the resolution passed at the Third Session of the Indian States' People Conference held at Bombay on the 9th, 10th and 11th June, 1931. *In inviting the attention of the Conference to this resolution, I should not be understood as being in favour of every one of the proposals embodied therein.* As suggested in my memorandum circulated during the first Session of this Conference, and also in my speeches at the Plenary Conference, I beg to urge that it will be necessary to make provision for the following:—

(1) Federal citizenship and fundamental rights for the people of the States to be embodied in the new constitution.

(2) Federal judicial machinery to be provided in the constitution to protect the fundamental rights of the people of the States.

(3) Representation of the people of the States at least in one of the Houses of the Federal Legislature, preferably the Lower House, by some system of direct election.

(4) The linking up of the judiciary in the Indian States with the Federal Supreme Court.

3. Every minority community in British India has pressed at this Conference that certain fundamental rights should be provided in the new constitution in regard to safeguarding their position. If it is necessary to embody these rights in the new constitution for minorities in British India, it will be even more necessary to safeguard the rights and liberties of the people of the Indian States. Federal citizenship is a feature of all federal constitutions, and the people of the Indian States, as well as of British India, should have their citizenship rights guaranteed by the law of the constitution. These fundamental rights have been discussed in my memorandum referred to above, and also during the sittings of the Minorities Committee and of the Federal Structure Committee. The Third Report of the Federal Structure Committee has not made any reference to the position of the people of the States under the new constitution. As regards federal judicial machinery, it is not clear from the Report of the Federal Structure Committee whether the Supreme Court would intervene in case of the violation of any of the fundamental rights when they are embodied in the constitution. It is necessary to make this point quite clear. If the fundamental rights of any subject of an Indian State are violated by the executive authority of that State, adequate protection should be afforded to him by a resort to the Supreme Federal Court. As regards the method of selection of States' representatives in the Lower Chamber, it is clear that it

is a matter of the utmost importance to the Federation as a whole, and British India is as much interested as the people of the States that a proper constitution based upon a system of popular election should be devised by the States in sending their representatives to the Lower Chamber. Looking to the state of public feeling in India, nothing less than a system of direct election would prove acceptable and satisfactory to the people of the Indian States, as also to the people of British India. If a system of election is introduced in the States, there is no reason to doubt that the people of the Indian States will identify themselves with their Rulers in regard to all matters coming before the Federal Legislature, as local sentiment and loyalty to the Rulers are still very strong in the States.

It is to be hoped that the Rulers of the Indian States and their Ministers present at this Conference will secure the hearty co-operation and goodwill of their own people by making all necessary concessions for the recognition of their rights and liberties, and to satisfy their legitimate aspirations in the working of the new constitution.

19th November, 1931.

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